

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Albert Ford,)
Plaintiff,)
vs.) Case No. 07cv11457-JGD
James Bender, et al.,)
Defendants.)

BEFORE: The Honorable Judith G. Dein

Bench Trial Day 2

United States District Court
Courtroom No. 15
One Courthouse Way
Boston, Massachusetts
July 26, 2011

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P R O C E E D I N G S

THE CLERK: All rise.

You may be seated.

The United States District Court for the District of Massachusetts is now in session on July 26 of the year 2011. This is day 2 in the matter of Ford versus Bender, Civil Action No. 2007-11457.

THE COURT: Okay. I have the defendant's motion for a directed verdict.

Do you want to be heard?

MS. DANIELE: Yes, your Honor.

The defendants at this point move for a directed verdict. Plaintiff has not -- has not demonstrated that he's entitled to compensatory damages for the remaining claims in this action.

As a violation of due process, he must prove actual injury, and he has not demonstrated such actual injury at the close of his case. More importantly, in order to recover for an emotional distress under the PLRA, he must demonstrate a physical injury, and the plaintiff has not demonstrated that he suffers from a physical injury that he received during the requisite time period, the 52A time period, and I draw your attention to there -- the legal arguments are in the

1 memo, but I specifically draw your attention to two
2 cases: One is the Williams case, where an inmate spent
3 13 years in segregation and testified that he, quote,
4 passed out and hit his head on a table in the cell, was
5 unable to obtain help for quite a while because of
6 placement in segregation behind a solid door.

7 Furthermore, inmates in segregation must be
8 cuffed behind their backs when they are transported, and
9 this resulted in shoulder injury for plaintiff on at
10 least two occasions.

11 Plaintiff also stated one time while he was
12 cuffed, he fell down the stairs and injured his left
13 ankle, knee, and shoulder. That's similar to the
14 situation we have here in which the plaintiff complains
15 of injury to his ankle with regard to the cuffs. In the
16 Williams case, it was not sufficient to demonstrate
17 physical injury.

18 Similarly, in the Todd case cited in my
19 brief, the Court found that an increase in blood
20 pressure, aggravation of hypertension, and dizziness and
21 insomnia is insufficient to demonstrate physical injury,
22 similar to Mr. Ford's complaints here with regard to his
23 diabetes being exacerbated.

24 In addition, with regard to both of
25 those -- the claims that Mr. Ford has, he has absolutely

1 no medical testimony or anything to link that physical
2 injury to the time that he was in 52A or to his being
3 held in the DDU; therefore, defendants are entitled to a
4 directed verdict on the issue of compensatory damages,
5 and Mr. Ford's recovery will be simply nominal damages.

6 With regard to injunctive relief, he has not
7 demonstrated that there's any further relief that he's
8 entitled to at the close of his case. There isn't any
9 further appropriate relief after your order that his
10 holding is unconstitutional and process is required.

11 THE COURT: Okay. Counsel.

12 MR. SYRETT: Your Honor, we -- we disagree.
13 We believe that Mr. Ford has established that he
14 suffered an actual injury. His testimony was extensive
15 about the harm that he suffered during his period of
16 pretrial detention, including the loss of privileges,
17 the loss of opportunities.

18 He also -- to the extent that the defendants
19 argue that his prior time in the DDU somehow negates his
20 pretrial detention, he testified -- and Dr. Grassian
21 explained that this time was, in fact, different, and
22 had a much greater impact on him than the prior
23 incarceration in the DDU had.

24 We also disagree with the plaintiff's
25 characterization -- or I'm sorry -- the defendants'

1 characterization of the PLRA. This is not solely a
2 claim for mental and emotional distress. Certainly
3 Mr. Ford suffered emotional and mental distress, but his
4 rights were violated. He also suffered more concrete
5 deprivations, like, the loss of the opportunities, the
6 loss of privileges, and that sort of thing.

7 So we think that the PLRA requirement is
8 inapplicable to our claim; but even assuming for the
9 sake of argument that it is applicable, we think we have
10 more than met the standard, which requires more than a
11 de minimus showing. We think we've shown that.

12 Mr. Ford testified about his having elevated
13 blood sugar levels during his pretrial detention, in the
14 300s. We submitted evidence showing that he had
15 received a prescription for Tegretol to treat the
16 numbness in his ankles and feet and the burning in his
17 ankles and feet that he testified worsened as a pretrial
18 detainee, a numbness that continues to plague him to
19 this day. Mr. Ford also testified that the Tegretol was
20 not sufficient, and he needed a stronger prescription of
21 Neurontin; and the record suggests that he was diagnosed
22 with diabetic neuropathy.

23 So we think that that -- that injury is
24 sufficient to meet the de minimis threshold, and in our
25 opposition to the plaintiff's motion in limine, we cite

1 a number of cases that we think support our position
2 that his injuries are sufficient, including the fact
3 that these injuries were sustained over a period of 375
4 days. This wasn't a short-term, temporary situation.
5 This was more than a year that he was dealing with this,
6 and we think that that -- that factor certainly lends to
7 the -- to the harm that Mr. Ford suffered.

8 In terms of injunctive relief, we think that
9 there is -- it is appropriate for the Court to order
10 injunctive relief here to remedy the period from
11 April 2008, up through the summary judgment order, when
12 Mr. Ford continued to be held in the DDU and continued
13 to suffer the harms that are characteristic of the DDU,
14 and that there needs to be -- to remedy that harm and to
15 address that harm going forward, there needs to be some
16 sort of transition plan to promote an adjustment to --

17 THE COURT: Is the argument that since he
18 was deprived of the opportunity to engage in social
19 interaction and develop those skills or -- which Dr.
20 Grassian contends are negated by solitary, that the
21 remedy should be to sort of make up for those lost
22 opportunities; is that --

23 MR. SYRETT: Yes.

24 THE COURT: -- the link there?

25 MR. SYRETT: Yes.

1 And so for those reasons, your Honor, we
2 think that we have met our burden; we have established
3 our case, and that the directed verdict is not
4 warranted.

5 THE COURT: Okay. I'm going to deny the
6 motion for a directed verdict.

7 Would the defendant call your first witness.

8 MS. DANIELE: The defendants calls James
9 Bender.

10 THE CLERK: Please raise your right hand.

11 JAMES BENDER, SWORN

12 THE CLERK: Please be seated. Please state
13 your full name, spelling your last name for the record.

14 THE WITNESS: James R. Bender, B-E-N-D-E-R.

15 DIRECT EXAMINATION

16 BY MS. DANIELE:

17 Q. Good morning, Deputy Commissioner Bender.

18 Could you please tell me your current employment?

19 THE COURT: Can you do me a favor though.
20 Can you move the mike towards you.

21 Thank you.

22 MS. DANIELE: I'll try to speak up, too.
23 I'm sorry.

24 THE COURT: That's all right.

25 MS. DANIELE: You remember when you're

1 there, and you forget when you're over here. I
2 apologize.

3 THE COURT: And I have to confess to the
4 whole world that I can't hear. Okay. So now we all
5 know, and let's just deal with it.

6 BY MS. DANIELE:

7 Q. Deputy Commissioner Bender, could you tell us how
8 you're employed presently.

9 A. I'm retired from the Massachusetts Department of
10 Correction as of January 5th of this year.

11 Q. And prior to your retirement, what was your
12 position?

13 A. I was a Deputy Commissioner of the Prison
14 Division.

15 Q. When did you become Deputy Commissioner of the
16 Prison Division?

17 A. 2008, Commissioner Clarke appointed me as the
18 Deputy Commissioner of the Prison Division.

19 Q. Prior to 2008, what was your position?

20 A. For seven months, I was the Acting Commissioner
21 of Corrections prior to Commissioner Clarke being
22 appointed in November of 2007.

23 Q. And before that, what was your position?

24 A. I was the Deputy Commissioner of the Department
25 of Corrections -- the sole Deputy Commissioner of the

1 Department of Corrections from 2003, December, until
2 2007.

3 Q. Could you explain why your position changed in
4 2008.

5 A. Commissioner Clarke, when he came on board,
6 decided to have three commissioners. I was one of those
7 three. I was in charge of the day-to-day operations of
8 the prison division. There was a Deputy Commissioner of
9 Classification and Treatment and also a Deputy
10 Commissioner of Administration. So he wanted to have
11 three separate deputy commissioner positions.

12 Q. Before you were appointed deputy commissioner in
13 2003, what was your position?

14 A. I was the Assistant Deputy Commissioner of the
15 Community Corrections Division.

16 Q. And just briefly, can you give the Court your
17 previous employment history with the department.

18 A. Okay. I was -- I started in 1977 as a
19 correctional social worker. I was in the treatment end
20 of the business. I worked as Director of Treatment at
21 MCI-Walpole; two deputy superintendent positions at
22 MCI-Concord, the treatment and classification as well as
23 operations; and then I was superintendent of two
24 institutions: MCI-Plymouth and North Central
25 Correctional Institution in Gardner; and then for about

1 ten years, I was Assistant Deputy Commissioner of Secure
2 Facilities.

3 Q. As the Deputy Commissioner of the Prison
4 Division, just prior to your retirement, could you tell
5 us what your responsibilities were.

6 A. Primary responsibility was the day-to-day
7 operations of all 18 correctional facilities, primarily
8 safety and security of those facilities. I was also in
9 charge of several divisions within the Department of
10 Corrections, including the transportation division, the
11 inmate discipline division, as well as the investigative
12 unit.

13 In that responsibility also, the appellate
14 authority evolved on Department Disciplinary Unit
15 Appeals. When an inmate was sentenced to a Department
16 Disciplinary Unit, and they appealed that sentence, it
17 would come to me, and I'd make the determination on
18 whether it was sustained or not.

19 Q. And in January of 2007, were those your
20 responsibilities?

21 A. Yes.

22 Q. In June of 2007, you were acting commissioner; is
23 that correct?

24 A. That's correct.

25 Q. Did you also have some of the same

1 responsibilities that you had when you were Deputy
2 Commissioner of the Prison Division?

3 A. We had an acting deputy commissioner at that
4 time. I was acting commissioner, so, in essence, I was
5 still responsible for the entire operations of all
6 correctional facilities, but at the time, I was also in
7 charge of treatment and classification, as well as
8 administrative when I was acting commissioner.

9 Q. How many inmates are there in the Department of
10 Correction custody?

11 A. Approximately 11,000.

12 Q. Can you briefly tell this Court what the
13 placement possibilities are for inmates in the
14 Department of Correction?

15 A. There are four security ratings in the Department
16 of Corrections: maximum, medium, minimum, and
17 prerelease.

18 In 2007, we had two maximum security facilities
19 at MCI-Cedar Junction and Souza-Baranowski Correctional
20 Center. We had approximately eight or nine medium
21 security facilities; five minimum prerelease facilities;
22 so, those different ratings.

23 Q. Could you briefly describe the types of units
24 that were in the medium security institutions.

25 A. Primarily the medium security, as compared to a

1 maximum security, they would have -- they could have
2 single cells, double bunk cells, but in addition, they
3 would have a lot of dormitory-style units in a medium
4 security environment.

5 All medium security facilities, except Bay State
6 Correctional Center, also had what was the special
7 management unit enclosed in that facility; whereas, in
8 maximum security, they did not have any dormitory-style
9 units. They were more secure internal housing
10 structured.

11 Q. What type of inmates are housed in medium
12 security?

13 THE COURT: Are you saying medium or
14 minimum?

15 MS. DANIELE: Medium. I apologize, your
16 Honor.

17 A. You know, it runs in the full gamut. We have
18 hundreds of lifers, first degree lifers, second degree
19 lifers, housed in medium security facility, all the way
20 down to inmates, who are serving two-and-a-half-year
21 sentences.

22 Q. What are the units in maximum security
23 institutions?

24 A. Those units are primarily single bunk; however,
25 at Souza-Baranowski Correctional Center, there is about

1 300 cells that are double bunked there, but in -- they
2 are secure units, internal housing units within that
3 facility. They also have a secure management unit; and
4 in addition, at MCI-Cedar Junction, we have the
5 Department Disciplinary Unit.

6 Q. At MCI-Cedar Junction, have there ever been any
7 other units?

8 A. Yes. We've had many different units in the past.
9 We've had protective custody units in the past. We've
10 had secure units; restricted units, we call them, for
11 some high-profile inmates. We've had security threat
12 group or gang blocks that we called at times in the
13 past. We've had a variety of different units there.

14 Q. You testified that Cedar Junction has the
15 Department Disciplinary Unit or I'm going to refer to it
16 from now on as the DDU for short; is that correct?

17 A. That's correct.

18 Q. What are the purposes of the DDU?

19 A. DDU was established in 1992 by then Commissioner
20 Larry Dubois. It was an alternative or -- to the
21 Department Segregation Unit that we had in existence
22 throughout the 1970s and '80s.

23 The DSU, as we called it, was a
24 classification unit, where inmates were classified to
25 that unit; and we found that it was really a revolving

1 door, and it didn't serve the purpose that it was first
2 intended to.

3 As a result, the commissioner at that time
4 decided to establish a Department Disciplinary Unit.
5 You know, the purposes are punishment, deterrence, or
6 primarily safety and security. You know, it's --
7 inmates are sentenced to that unit, not classified.
8 They're sentenced based on a disciplinary infraction
9 that they have been found guilty or pled guilty to.

10 Q. What are the possible sentences to the DDU?

11 A. It could be a suspended sentences -- sentence,
12 all the way up to a 10-year sentence, which is the max.

13 Q. Is a 10-year sentence common?

14 A. No.

15 Q. What -- you testified that there are Special
16 Management Units at the -- most of the mediums and the
17 two maximum security institutions. Could you tell me
18 what those units are used for.

19 A. Primarily for internal housing, you know, for the
20 superintendent to have an option of housing an inmate,
21 who may be disruptive or may be on an administrative
22 segregation status, which means awaiting some sort of
23 classification hearing, awaiting a disciplinary hearing,
24 awaiting an internal investigation, the completion of an
25 internal investigation. So the SMUs are used by the

1 facility to -- to manage their inmate population.

2 Q. Is there a regulation that governs the Special
3 Management Units?

4 A. Yes.

5 MS. DANIELE: Your Honor, at this point, I'm
6 going to seek to introduce the Special Management Unit
7 Policy. It's my understanding there's an objection to
8 this, so...

9 MS. PIROZZOLO: Well, we object to this as
10 the inappropriate comparison in this case for the
11 purpose of calculating damages, but we don't have any
12 other objections.

13 THE COURT: So that objection is overruled.

14 I'm leaving myself the option of deciding
15 what the appropriate comparison, if any, to be made. So
16 we'll mark this as Exhibit 17.

17 (Exhibit No. 17 was admitted into evidence.)

18 MS. DANIELE: I have an extra one if the
19 Court wants a copy.

20 THE CLERK: Yeah, that would be great.

21 MS. DANIELE: Your Honor, may I approach the
22 witness?

23 THE COURT: Yes.

24 BY MS. DANIELE:

25 Q. Deputy Commissioner Bender, I'm handing you

1 what's been marked Defendant's Exhibit No. 17.

2 Could you identify that for me, please.

3 A. That's a 103 CMR 423 Special Management Unit for
4 the Department of Corrections.

5 Q. And is this the regulation that governs those
6 units that you've been discussing, the Special
7 Management Units?

8 A. It is.

9 Q. Does this policy also govern the procedures for
10 placing an inmate in administrative segregation?

11 A. Yes.

12 Q. Do you know what those procedures are?

13 A. Yes, I do.

14 Q. Could you tell me what those are, please.

15 A. To place an inmate in a Special Management Unit,
16 the first order of business is to clear that inmate
17 through the health services division, to be screened by
18 a health professional.

19 THE COURT: Could you do me a favor, before
20 you go there though, are you using Administrative
21 Segregation as the same as SMU or SMU was broader?
22 What --

23 THE WITNESS: Special Management, it --
24 yeah, it -- it's basically one of the things that you
25 use the Special Management Unit for. Admin Seg, which

1 is a status of, as I mentioned earlier, there's like six
2 or seven different criteria that you can use it for,
3 which is --

4 THE COURT: So this is anything that the
5 facility itself feels it needs to segregate these
6 inmates for --

7 THE WITNESS: That's correct.

8 THE COURT: -- basically?

9 THE WITNESS: That's correct.

10 THE COURT: All right.

11 THE WITNESS: So after the health screening,
12 the superintendent or a designee must review that
13 inmate's status within 72 hours. The status must then
14 be reviewed every seven days for 60 days, and then every
15 30 days thereafter by -- usually by the Deputy
16 Superintendent of Classification Treatment; sometimes,
17 the Director of Classification at each facility.

18 BY MS. DANIELE:

19 Q. Is there a formal hearing associated with the
20 reviews that are done under the -- this regulation?

21 A. No, there's not.

22 Q. Deputy Commissioner Bender, I'm going to change
23 course here.

24 THE COURT: Before you do that, what's the
25 purpose of the reviews? When you have the review every

1 seven days, what -- what are you checking for?

2 THE WITNESS: We -- we started that years
3 ago, to just ensure that the facility kept on top of
4 those inmates they placed in the status.

5 Sometimes you have an inmate, who is
6 awaiting classification, let's say, out-of-state.
7 That's not an internal function. That's a function of
8 the central classification. So, it's just an insurance
9 policy to make sure that the facility knows the status
10 of that inmate is there, and if -- if he is there for
11 any extended period of time, for them to get on the
12 phone with central classification just to sort of prod
13 them to make sure that they know when this inmate's
14 going to be moved. It's just a process to ensure that
15 that inmate just doesn't fall through a crack and is
16 never found again; that we know somebody's monitoring
17 their case.

18 THE COURT: So the intention is that this is
19 a temporary assignment?

20 THE WITNESS: That's correct. It -- the
21 policy reads that it's a temporary assignment to these
22 units, you know, and that's what it's used for in the
23 vast majority of cases. There are examples when it has
24 gone beyond a temporary status, based on the difficulty
25 of finding a proper placement for an inmate.

1 THE COURT: Thank you.

2 BY MS. DANIELE:

3 Q. Deputy Commissioner Bender, as Deputy
4 Commissioner of the Prison Division, what was your
5 responsibility with regard to pretrial detainees or
6 52As, as we colloquially have called them, in the
7 department?

8 A. The -- clarifying, what's my responsibility as it
9 relates to them being housed?

10 Q. Their acceptance to the department?

11 A. Okay. For 52As, basically we had a Court decree
12 from Suffolk County and Middlesex County that dates back
13 to the 1980s that mandated the Department of Correction
14 take in all 52As from those two counties, sort of an
15 unlimited number. They can send whoever they wanted.
16 Beyond that, it is really the responsibility of the
17 Commissioner of Corrections to accept a 52A into our
18 facilities; and that would usually come about through a
19 request by a respective sheriff in one of the 13 counties
20 that have facilities.

21 They would make a request of the commissioner to
22 house an inmate, and obviously a 52A inmate, as the law
23 prescribes, has to have served prior time in the state
24 system.

25 Q. How would the commissioner know about a 52A

1 request that was made?

2 A. Through the director of classification, central
3 classification. That -- that's the main screening body
4 for the department. They receive those requests from
5 the sheriffs.

6 Q. And does the classifica -- does anyone in the
7 classification department have authority to accept a
8 52A?

9 A. You have the director, who is the commissioner's
10 designee that would be -- that would act on -- act for
11 the commissioner, but usually it would be in a
12 con -- they could accept him, but they usually have a
13 conversation with the deputy commissioner at least about
14 that 52A.

15 Q. Deputy Commissioner Bender, I'm going to draw
16 your attention to Mr. Ford's placement as a 52A.

17 In January of 2007, did he come into the
18 department as a 52A?

19 A. He was already in the department. His sentence
20 had expired, and he had charges pending; so, he became a
21 52A at that point in January of '07.

22 Q. At that time, were you contacted to make a
23 determination as to where he would be housed?

24 A. I was.

25 Q. And what was your decision?

1 A. My decision at the time was to have him housed in
2 the Department Disciplinary Unit at MCI-Cedar Junction.

3 Q. Why was that?

4 A. You know, I looked at a lot of information,
5 primarily his entire incarceration record, including his
6 previous incarcerations, and Mr. Ford has a very serious
7 record, including stabbing of inmates in the 1980s,
8 1990s, 2000.

9 In 2002, he had a very serious incident in a DDU
10 that resulted in the maximum sentence in the DDU, ten
11 years for stabbing two correctional officers as well
12 as -- as well as holding a nurse hostage.

13 In addition to that, in 2005, while he was still
14 in the DDU, but housed in Block 10, due to repairs that
15 were under -- underway in DDU, we had -- we had to empty
16 the entire unit out due to some malfunctioning that was
17 occurring, he stabbed an inmate in 2005 while in Block
18 10.

19 Based on the entire history, his entire history,
20 my serious concerns about safety and security of staff
21 and inmates, I felt that the most appropriate placement
22 for him at that time was at DDU.

23 Q. In June of 2007, Mr. Ford had been out on bail
24 and was returned to the department.

25 Were you involved in his decision -- in the

1 decision of where to house him when he was returned in
2 2007?

3 A. I was the commissioner -- commissioner at the
4 time so that my acting deputy commissioner would have
5 been -- had day-to-day operations in that, but certainly
6 I was informed of his coming back and that his placement
7 at that time would continue to be the DDU.

8 Q. When --

9 THE COURT: May I ask you then, so you're
10 saying that there was a separate assessment in January
11 of '07 that he was not kept in the DDU to continue
12 his -- the 10-year sentence that he had?

13 THE WITNESS: He certainly -- well, I mean I
14 knew that he had that still when he left in
15 January -- or when his sentence expired in January of
16 '07, he still had time remaining on his DDU sentence;
17 so, that was certainly a factor. I knew that he could
18 still be placed in there based on that.

19 I had sought advice at that time from the
20 legal department and asked them whether -- where I could
21 house him and whether that would be an appropriate
22 placement. I was told that I could house him there. I
23 looked at all the options of where I could place him at
24 the time, and that was the only one I felt that was
25 reasonable, based on his serious concerns for his

1 penchant for violence that he has demonstrated over the
2 last 30 years.

3 THE COURT: When someone's put in the DDU
4 for a disciplinary infraction, is there a -- at that
5 point, there's a process?

6 THE WITNESS: That's correct.

7 THE COURT: And there's an appeal process?

8 THE WITNESS: That's correct.

9 THE COURT: Okay. So you didn't have any
10 new process in connection with the January '07?

11 THE WITNESS: No, we did not.

12 THE COURT: All right. So you were relying
13 on the earlier sentence?

14 THE WITNESS: That's correct.

15 THE COURT: Okay. Thank you.

16 BY MS. DANIELE:

17 Q. Deputy Commissioner Bender, in June --

18 THE COURT: I'm sorry. You were up to June
19 '07.

20 MS. DANIELE: Thank you, your Honor.

21 BY MS. DANIELE:

22 Q. In June of 2007, were the same reasons used to
23 return Mr. Ford to the DDU?

24 A. Yes, they were.

25 Q. And in June of 2007, did you, again, make a new

1 determination that housing in the DDU was the most
2 appropriate housing?

3 A. I did.

4 Q. Was there anything else that you considered in
5 June of 2007?

6 A. I looked at all the options. I am -- you know, I
7 tour every facility, so I am -- I'm very well briefed on
8 what's available at all of our facilities, including the
9 SMUs at all the medium and maximum security facilities.

10 The department 10 -- I mean, in Block 10. In
11 Block 10, he was able to stab another inmate, and
12 that's -- the reason is that we had grill doors in Block
13 10; whereas, in the Department Disciplinary Unit, we
14 have solid doors. There's very limited movement in the
15 DDU. Based on his serious threat to security, I felt
16 that the DDU was the most -- was the only placement
17 option I had at the time.

18 Q. And you felt that way despite the fact that he
19 had been in the community for three months?

20 A. Yes. I didn't make that decision for him to go
21 in the community. Someone else did, but while he was in
22 our prison setting, based on his history that he has had
23 with us and demonstrated, you know, two years prior,
24 where he had, you know, stabbed an inmate, and five
25 years prior where he had seriously stabbed two officers

1 and taken a nurse hostage, based on that and his entire
2 history -- usually you find an inmate where early on the
3 violence occurs, and as they get older, the violence
4 sort of lessens. In this case, we've had violence
5 throughout all three decades, and I felt that that was
6 the most appropriate placement for him in order to
7 ensure staff and inmate safety.

8 Q. Deputy Commissioner Bender, was Albert Ford the
9 only 52A or pretrial detainee that was ever housed in
10 the Department Disciplinary Unit?

11 A. No, he was not.

12 Q. Other inmates that were placed there, why did you
13 place them there?

14 A. Every case is an individual case. You've got to
15 look at the entire record of that inmate and what threat
16 he poses to the safety and security of the facility.
17 Each one is an individual decision. There are some
18 inmates who became 52A were released from DDU because it
19 was our determination that based on their history, they
20 did not pose a threat to the safety and security of the
21 facility.

22 In Mr. Ford's case, as I mentioned, the penchant
23 for violence, even after the violence, he's had
24 disciplinary report after disciplinary report, for
25 possession of weapons; for threatening staff, including

1 nurses several times; for contraband. He has always
2 been a disruptive force within the DDU, and that's the
3 reason that you do it in an individual basis; and in his
4 case, we felt that was the most appropriate placement
5 for him.

6 Q. What benefits do the DDU offer for safety and
7 security purposes in housing an inmate like Mr. Ford?

8 A. As I mentioned earlier, the solid door; whereas,
9 he does not have that in the Block 10, we have that in
10 the DDU. It's -- the movement within that unit is very
11 restricted. You're in handcuffs and leg irons. Staff
12 there are better trained to deal with that type of
13 inmate, an inmate who has been very disruptive in the
14 past. So overall, the safety and security aspects of
15 that unit is most appropriate for a serious inmate that
16 has demonstrated a penchant for violence in the past.

17 THE COURT: If someone is given a ten-year
18 sentence to the DDU, do you review that at any time?
19 Are there situations where you can decide even though
20 the sentence was ten years that it should be shortened?

21 THE WITNESS: Yes. There are monthly
22 reviews within the Department Disciplinary Unit, and the
23 inmate is supposed to come out for those reviews to
24 review his -- his case.

25 There have been times in the past where the

1 superintendent has recommended a lessening of a
2 sentence. Usually it's near the end of that sentence
3 when, you know, the last year or so, based on a
4 number -- we might have the DDU that is -- is filled up,
5 and we have more inmates, who are stationed around the
6 state in SMUs waiting to come in, and at times we have
7 reduced sentences of those inmates in there.

8 THE COURT: So Mr. Ford was reviewed monthly
9 in the 10-year period?

10 THE WITNESS: Yeah. There's a monthly
11 review in the department -- in the DDU where he's
12 supposed to come out. If he does not come out, he loses
13 credit for that month, and he does not get credited for
14 the month he's in the DDU; but if he comes out, he
15 remains free of disciplinary reports, he gets credited
16 for each month, and then obviously his sentence is
17 expiring at that time.

18 You know, that's one -- that's one of the
19 debates between the DSU and the DDU. There's some
20 drawbacks for the DDU. DDU is a fixed sentence.
21 There's a set amount of time; whereas, a DSU model is
22 sort of open-ended. It could last longer than ten years
23 in some cases; but in -- for the DDU, there's a fixed
24 time that an inmate is in there, and they are -- they
25 have monthly reviews while they're in there.

1 THE COURT: What does coming -- when you say
2 "he comes out," what does that mean?

3 THE WITNESS: That means his sentence is
4 expired. And so that if he's -- for instance, if he is
5 serving a two-year DDU sentence, and he serves that
6 entire two years, he complies with all the rules and
7 regulations in that unit, he attends his monthly
8 reviews, at the end of two years, he's released to
9 general population of the facility or of another
10 facility.

11 THE COURT: Within those two years,
12 whoever's reviewing him can decide to shorten the
13 sentence?

14 THE WITNESS: Not the -- not the people
15 within the review. You know, those are staff that work
16 within the DDU, but the superintendent of that facility
17 could make a recommendation to the Deputy Commissioner's
18 Office to have that sentence lessened in some regard.
19 And as I said earlier that it's usually near the end of
20 the sentence. So, I mean it would be rare a year in or
21 two years in for someone doing a ten-year sentence for
22 them to come up and say, we would like that sentence to
23 be shortened, but it usually occurs at the end of the
24 sentence.

25 THE COURT: So when you say they come out

1 monthly, that's to meet with the review panel?

2 THE WITNESS: That's what they're supposed
3 to do, yes.

4 THE COURT: But they're still housed in the
5 DDU?

6 THE WITNESS: That's correct.

7 THE COURT: And who does the review panel
8 consist of?

9 THE WITNESS: I'm going to let
10 the -- someone else answer that. I think it's the
11 director of -- the administrator of the unit, who -- we
12 have an administrator of the DDU, as well as other staff
13 within that unit that meet with the inmate on a monthly
14 basis.

15 THE COURT: Thank you.

16 BY MS. DANIELE:

17 Q. Deputy Commissioner Bender, if you were unable to
18 house Mr. Ford in the DDU, in January of 2007, what
19 would you -- where would you have placed him?

20 MS. PIROZZOLO: Objection, your Honor.

21 THE COURT: Overruled.

22 THE WITNESS: If I had no other options for
23 Mr. Ford at that time -- if I did not have the DDU, the
24 only place I could place him at that time would be Block
25 10, the west wing segregation unit of MCI-Cedar

1 Junction.

2 BY MS. DANIELE:

3 Q. Why would you choose Block 10 rather than another
4 SMU throughout the Commonwealth?

5 A. Because it's my opinion, even though we have the
6 drawbacks of those grill doors within Block 10, it's
7 still the most secure setting within the Department of
8 Corrections that -- that we have; and as a result of
9 that, if I did not have DDU as a possibility, that would
10 be the only option I think I could have had to use at
11 the time.

12 BY MS. DANIELE:

13 Q. As deputy commissioner, and subsequently as
14 commissioner -- acting commissioner, would you have ever
15 approved Mr. Ford for general population at that time?

16 A. No, I would not.

17 Q. Deputy Commissioner Bender, could you describe to
18 this Court what a security level A is.

19 A. Security level A is a designation we established
20 several years ago to sort of, again, keep track of those
21 inmates that pose the most serious threat of escape or
22 violence within our institutions.

23 It was just -- and prior to establishing the
24 designation, it was really up to the superintendents of
25 each facility to keep that designation. There were

1 problems with inmates transferring from one facility to
2 the next of some of those falling through the cracks.
3 So we established a designation and basically stated
4 that those inmates -- and we had a criteria of when the
5 escape had to occur or a violence had to occur that we
6 place an inmate on as a level A; and in that status,
7 they would have to be monitored more closely.

8 If they were leaving the facility, they'd have to
9 be -- there would have to be a four-man escort with
10 that. Under normal circumstances, we have a two-man
11 escort leaving the facility. We wanted, in this case,
12 to ensure safety and security to the public to have four
13 officers on that individual.

14 Q. Who makes the determination of whether -- who
15 identifies an inmate as a level A?

16 A. It starts internally at each facility with the
17 inter perimeter security team. They're our security arm
18 of the facility. They monitor the inmate's record and
19 the like; makes a recommendation to the superintendent,
20 who then makes a recommendation, as I understand it, to
21 the chief of investigative services; and that's when
22 it -- a designation of level A is established.

23 Q. So there are a number of different arms of the
24 department involved --

25 A. Yes.

1 Q. -- correct?

2 In 2007, was Mr. Ford a level A?

3 A. Yes, he was.

4 Q. Deputy Commissioner Bender, yesterday there was
5 some testimony from Dr. Stuart Grassian that inmates
6 should not be released to the streets directly from
7 segregation.

8 In your professional opinion, is it an ideal
9 situation to release inmates directly from segregation
10 or the DDU to the streets?

11 A. No, it's not.

12 Q. And why is that?

13 A. The -- the last thing we want to do is release an
14 inmate from a setting like a DDU or a segregation to the
15 streets without that inmate having the benefit of going
16 through various levels of a facility, including medium
17 security, where there is a great deal of programming
18 that he can get involved with. Minimum security where
19 he could get involved with community work crews that
20 would begin his reintegration to the street, as well as
21 prerelease, the last 18 months of his incarceration,
22 where he could actually work in a job.

23 We feel that's the most ideal process for an
24 inmate to go through; and the fact is the vast majority
25 of inmates go through that process. They comply with

1 the rules and regulations of the institution, and they
2 find themselves at the end in a prerelease status before
3 they're released to -- on parole or the expiration of
4 their sentence; but, unfortunately, there are some
5 individuals that, you know, for whatever reasons, do not
6 comply with the rules and the regulations, and involve
7 themselves with serious violations, including security
8 threat group violations, which Mr. Ford has been
9 involved with in the past, gang problems, where he has,
10 you know, threatened other inmates.

11 MS. PIROZZOLO: Your Honor, I object to
12 this. It's all hearsay.

13 THE COURT: What did you decide about the
14 disciplinary reports? I mean are we dealing -- I need
15 to deal with something concrete here.

16 MS. PIROZZOLO: Yeah, I mean we object to
17 introduction of inadmissible hearsay, and all of this
18 testimony about what he has heard is inadmissible
19 hearsay.

20 MS. DANIELE: It's not simply what he's
21 heard though. It's what he bases his decisions on and
22 what he -- why Mr. Ford is not appropriate for other
23 housing or release -- direct release from -- to the
24 streets from any other housing.

25 MS. PIROZZOLO: There has been no foundation

1 established that Mr. Bender knows anything about any of
2 this.

3 THE COURT: That objection is sustained.

4 If you want to describe the process
5 generally, that's all right; but if -- I'm not going to
6 take the analysis of Mr. Ford without a foundation.

7 BY MS. DANIELE:

8 Q. Deputy Commissioner Bender, without discussing at
9 this point Mr. Ford directly, why would you release an
10 inmate directly from segregation or the DDU to the
11 streets?

12 A. We found that that -- again, that inmate refused
13 to comply with the rules and regulations of the
14 facility; was seriously assaultive to staff and other
15 inmates; and unfortunately, on a few occasions, inmates
16 who demonstrate that, the most appropriate release at
17 the time is from the DDU or segregation units, the only
18 place we can release them. If we try to release them
19 back to a general population to get them prepared for
20 eventual parole or wrap-up, you know, they get involved
21 with other incidents where other inmates and staff lives
22 are in danger, and it's my job to protect other staff
23 and other inmates; and I just can't do that so...

24 THE COURT: Well, what happens if -- what's
25 the process if someone's DDU sentence expires around the

1 time that their criminal sentence expires; so, you don't
2 have 18 months, unless you hold them longer? What do
3 you do then? Do you shorten the DDU sentence by
4 18 months?

5 THE WITNESS: I'm sorry. I didn't quite --

6 THE COURT: Somebody -- somebody gets a DDU
7 sentence. It's -- right? They've committed an
8 infraction, and there's a sentence. Let's say, two and
9 a half years.

10 THE WITNESS: Okay.

11 THE COURT: All right. That two and a half
12 years coincides with the end of their underlying
13 criminal sentence; so, they're going to be released on
14 "X" date, which coincides with the expiration of the DDU
15 sentence and their underlying criminal sentence, so that
16 they don't have an additional 18 months or -- to go to
17 medium security, minimum security, prerelease.

18 THE WITNESS: Okay.

19 THE COURT: What -- what do you do?

20 THE WITNESS: They're released right to the
21 streets.

22 THE COURT: They are.

23 THE WITNESS: Yes, they are.

24 BY MS. DANIELE:

25 Q. Deputy Commissioner Bender, would any of

1 those -- of the inmates that the judge was just
2 referring to, would an inmate ever be released from the
3 DDU early if his DDU sanction and criminal sanction were
4 to expire at the same time?

5 A. We have done that in the past due to -- again,
6 it's all predicated on the review of that inmate,
7 whether they are -- have refrained from D reports or are
8 not a management problem within the DDU. We had
9 released inmates early so they can partake in some of
10 the re-entry efforts that we have in the department. We
11 also have some re-entry efforts -- we have a whole
12 re-entry department now that actually go into the
13 facility to work with the inmates, even if they're in
14 the DDU, or they're in a segregation unit in order to
15 assist them in some re-entry planning, to get them ready
16 for release.

17 Q. How frequently do you release inmates from the
18 DDU directly to the street?

19 A. Not often.

20 Q. In January of 2007, if Mr. Ford had not had
21 outstanding charges, would he have been released
22 directly from the DDU to the streets?

23 A. Yes, he would.

24 Q. Why would that have been?

25 A. Because his sentence had expired.

1 Q. His criminal sentence?

2 A. His criminal sentence had expired, yes.

3 Q. Would you have considered him for early release
4 from the DDU to participate in programs?

5 A. No, I would not.

6 Q. Why not?

7 A. Just because of the violence that he has
8 demonstrated over his incarceration.

9 MS. PIROZZOLO: Your Honor, I object.

10 THE COURT: Overruled.

11 BY MS. DANIELE:

12 Q. You can go ahead.

13 A. I just said because of the violence that he has
14 demonstrated over his incarceration.

15 Q. Deputy Commissioner Bender, during your testimony
16 regarding Mr. Ford's placement in the DDU in
17 January -- in both January and June of 2007, you
18 testified that he had an outstanding DDU sentence for a
19 disciplinary infraction of staff assault and hostage
20 taking; is that correct?

21 A. That's correct.

22 MS. DANIELE: Your Honor, at this time, I
23 want to introduce the disciplinary report into evidence.
24 It is objected to.

25 THE COURT: Okay. What's the objection?

1 MS. PIROZZOLO: The objection is hearsay,
2 your Honor, and prejudice.

3 THE COURT: Huh?

4 MS. PIROZZOLO: And prejudice.

5 THE COURT: Can I see?

6 MS. DANIELE: The report?

7 MS. PIROZZOLO: And I would add relevance.

8 THE COURT: So why is this not hearsay?

9 MS. DANIELE: Your Honor, it's a business
10 record kept in the regular course of business by the
11 Department of Corrections. It is the DDU hearing packet
12 that Mr. Ford received at the time in the process --
13 that he received at that time and has kept in the
14 regular course of business; and it's kept in the regular
15 course of the Department's business.

16 MS. PIROZZOLO: Your Honor, I mean, this
17 is -- you know, you can see how thick it is, and it's
18 filled with hearsay statements, including handwritten
19 notes from correction officers, all different sorts of
20 hearsay statements, and in our motion in limine, filed
21 in the case with regard to these types of reports, we
22 cited several cases in which courts have consistently
23 declined to admit incident reports prepared by prison
24 guards in light of the self-serving nature of such
25 reports; though, I am happy to give the Court those

1 cites, or they're in our motion in limine.

2 THE COURT: I think for present purposes,
3 I'm going to admit it just as a reflection of what's in
4 the records and not for the truth of the matter asserted
5 in there.

6 MS. DANIELE: Okay. I would ask also, your
7 Honor, that it be -- it be accepted for rebuttal of what
8 Mr. Ford testified to occurred on this incident and what
9 it --

10 THE COURT: No, I'm not accepting this as
11 for the truth of the matters asserted in here, but I
12 will accept it as this is what is reflected in his
13 records at the prison.

14 MS. DANIELE: Thank you, your Honor.

15 If there is -- if there's no question on
16 authenticity, and it's just going to be accepted, then I
17 have no further questions.

18 THE COURT: Okay. So this is Exhibit 18,
19 accepted for the limited purpose of reflecting the
20 contents of the record -- of Mr. Ford's records.

21 (Exhibit No. 18 was admitted into evidence.)

22 CROSS-EXAMINATION

23 BY MS. PIROZZOLO:

24 Q. Good morning, Mr. Bender.

25 A. Good morning.

1 Q. Now, I'd like to talk with you about those points
2 in 2007 and 2008 when you addressed Mr. Ford's
3 situation. Can you do that?

4 A. Okay.

5 Q. Okay. And I want to start with January 2007.
6 Okay?

7 A. Okay.

8 Q. Okay. And that is the period at which Mr. Ford's
9 time of unconstitutional confinement in the DDU began;
10 correct?

11 A. That's your terminology, not mine.

12 THE COURT: I don't think he thinks it was
13 unconstitutional.

14 BY MR. PIROZZOLO:

15 Q. That's what the Court has held; right?

16 A. Okay.

17 Q. All right. Now, you were the acting deputy
18 commissioner of the prison division at that time;
19 correct?

20 A. I was the Deputy Commissioner of the Prison
21 Division.

22 Q. And in January, you received an email from
23 Ms. Carol Mici about Mr. Ford's situation; correct?

24 A. Yes, I did. That's correct.

25 Q. Okay. And in that email, Mrs. Mici told you that

1 Mr. Ford was scheduled to complete his sentence on
2 January 6, 2007; correct?

3 A. I can't remember the exact -- if you have an
4 example of that, I can take a look at that email. I
5 don't recall it.

6 MS. PIROZZOLO: May I approach, your Honor?

7 THE COURT: Yes.

8 (Witness handed document.)

9 THE WITNESS: Thank you.

10 BY MS. PIROZZOLO:

11 Q. And she also told you -- well, let me -- let me
12 stand on my question.

13 She told you that Mr. Ford's sentence was going
14 to wrap up on Saturday, January 6, 2007; correct?

15 A. His release date scheduled, yes, on Saturday,
16 January 6, 2007; that's correct.

17 Q. And she also told you that she wasn't going to
18 accept Mr. Ford on 52A status; correct?

19 A. That's correct.

20 Q. Okay. And as a 52A prisoner, he would remain in
21 the custody of MCI-Cedar Junction; correct?

22 A. Her decision was to remain in custody at that
23 time in the Department of Correction, yes, and at
24 MCI-Cedar Junction, that's correct, although it doesn't
25 say MCI-Cedar Junction.

1 Q. But you knew at that point in time that Mr. Ford
2 was in your custody and that his status was changing
3 from a convicted prisoner to a pretrial detainee;
4 correct?

5 A. I did. That's correct.

6 Q. Now, let's talk about some of the things you did
7 not do when you learned of his change in status. Okay?

8 A. Okay.

9 Q. Okay. At the time you did not speak to the
10 superintendent of MCI-Cedar Junction about where
11 Mr. Ford should be housed as a pretrial detainee;
12 correct?

13 A. I can't recall who I spoke to at that time.

14 Q. Okay. Sir, I put in front of you your
15 deposition.

16 A. Okay.

17 Q. Could you turn to page 107. Line 18.

18 A. 107. I'm sorry. Okay.

19 Q. Okay. And Mr. Syrett asked you this question:
20 "You don't think you would have talked to the
21 superintendent of Cedar Junction?"

22 Do you see that?

23 A. Yes, I said it's a possibility, but I don't think
24 I did. I don't recall speaking to him, but it's a
25 possibility.

1 Q. Now, you also did not speak to the person in
2 charge of DDU where Mr. Ford had been housed most
3 recently; correct?

4 A. That's correct.

5 Q. Now, both of those people, the superintendent of
6 MCI-Cedar Junction and the director of the DDU would
7 have had more information about Mr. Ford's recent
8 behavior than you; correct?

9 A. They would have, yes.

10 Q. Yet, you didn't have a single conversation with
11 them or anyone else about where Mr. Ford should be
12 housed?

13 A. That's not correct. I said there's a possibility
14 I spoke to the superintendent. I just didn't remember.
15 I did not speak to the administrator; that's for
16 certain. I believe might have -- I spoke to Phil Silva,
17 who is the director of discipline, who would be familiar
18 with Mr. Ford's background. I spoke to legal, as I
19 mentioned earlier; and as I said, I'm not -- I don't
20 recall specifically who I spoke to at that time.

21 Q. You spoke to legal. Do you think they knew what
22 Mr. Ford's situation was?

23 A. I had no idea.

24 Q. Do you think they knew what Mr. Ford's situation
25 was in the DDU? I think you said you spoke to the

1 general counsel of the DOC.

2 Do you think Ms. Ankers knew?

3 A. I have no idea. I had no idea what she knew.

4 Q. Okay. Well, she didn't tell you about Mr. Ford's
5 situation and his behavior in the DDU, did she?

6 A. I can't recall the conversation.

7 Q. Okay. Now, the other thing you did not do is
8 review Mr. Ford's files in January, 2007; correct?

9 A. I can't recall if I did or not. I -- I could
10 have, but I'm not certain.

11 Q. So you -- you don't have any recollection of
12 going and looking at the document that Ms. Daniele just
13 introduced?

14 A. I have -- as I mentioned earlier, there's 11,000
15 inmates, 120 in the DDU. I'm responsible for all of
16 them. I can't recall what I looked at in January of
17 '07.

18 Q. Okay. And with 11,000 inmates, and you didn't
19 talk to anybody; you don't recall looking at records.
20 It's kind of hard to decide what the appropriate
21 placement is, isn't it?

22 A. Not at all. Not with Mr. Ford, because I'm well
23 aware of Mr. Ford. I spoke to Mr. Ford in my tours at
24 MCI-Cedar Junction on several occasions. I know what
25 his record is. I know the records of inmates in that

1 unit. I'm well versed in what happens within DDU. I
2 had numerous conversations with the superintendent.

3 MS. PIROZZOLO: Your Honor, I move to
4 strike.

5 THE COURT: I think you've answered the
6 question.

7 The motion to strike allowed.

8 BY MS. PIROZZOLO:

9 Q. Now, the other thing you did not consider when
10 you decided Mr. Ford should stay in the DDU is whether
11 he would be able to adequately prepare to defend himself
12 against criminal charges; correct?

13 A. I felt that he would be able to adequately
14 prepare himself. I think I mentioned that in the
15 deposition as well.

16 Q. You didn't consider it specifically; correct?

17 A. No, I can't say it's correct. I just -- I just
18 knew from his status that he had access to the law
19 library and to attorneys within that unit, as other
20 inmates, many inmates in that unit are preparing for
21 criminal trials.

22 Q. Okay. What's in the law library in the DDU?

23 A. There's a room associated with each tier
24 that's --

25 Q. What -- what kind of books are in it?

1 A. You know, legal books. I'm not familiar with the
2 exact ones.

3 Q. Are you familiar with any of them?

4 A. I haven't -- I haven't been in there; so, I can't
5 say I am.

6 Q. So how would you know that it's adequate to help
7 him prepare for his criminal case?

8 A. Because our legal division has indicated that the
9 books in there are adequate.

10 Q. Okay. But you don't know?

11 A. Well, I know, you know, that they're there. So,
12 I'm familiar with the fact that we provide those -- that
13 access for inmates who are housed in DDU.

14 Q. Are there case books there?

15 A. I'm not familiar exactly what is there.

16 Q. Now -- now I want to talk about the things you
17 did consider in January 2007, when you kept Mr. Ford in
18 DDU. Okay?

19 A. Okay.

20 Q. So you did consider that Mr. Ford had a DDU
21 sentence; correct?

22 A. Yes.

23 Q. Okay. Now, I want to focus on that sentence.
24 That sentence involved -- the DDU sentence involved an
25 incident with prison guards; correct?

1 A. And a nurse.

2 Q. Okay. And that was the incident for which
3 Mr. Ford was awaiting trial; correct?

4 A. That's correct.

5 Q. So basically in 2007, you had to -- you were
6 housing Mr. Ford as a pretrial detainee for the same
7 thing he was awaiting trial on; correct?

8 A. Could you repeat that.

9 Q. Mr. Ford's DDU sentence was directed to the same
10 conduct for which he was awaiting trial; correct?

11 A. That's correct.

12 Q. Okay. So he was presumed innocent of that
13 conduct when he was in your custody; correct?

14 A. That's correct.

15 Q. But in January 2007, you decided he should be
16 punished for that conduct; correct?

17 A. I decided that he still posed a serious threat to
18 the orderly running of the facility as well as safety of
19 our inmates and staff, and that's why he --

20 Q. Punishment was an element of that?

21 A. Absolutely. I can't deny that there's a punitive
22 aspect to it, but it's primarily safety and security.

23 Q. Now, after you made that decision to keep
24 Mr. Ford in the DDU, you never notified him about that,
25 did you?

1 A. I didn't, no.

2 Q. You didn't direct anyone to notify him about
3 that, did you?

4 A. Not that I can recall, no.

5 Q. Okay. So you just left Mr. Ford in his cell
6 wondering why he was still in the DDU, even though he
7 had completed his criminal sentence?

8 A. I'm not certain who talked to him about that.
9 Somebody obviously had to notify him that he was staying
10 there. I didn't.

11 Q. You don't know anything about that, do you?

12 A. I'm not sure who spoke to him, as I said. As I
13 sit here right now, I'm not sure. That's four years
14 ago, so I'm not certain.

15 Q. You don't know if anybody told him why he was in
16 the DDU, do you?

17 A. I do not.

18 Q. Now, in March 2007, a judge of the Superior Court
19 let Mr. Ford out into the community; correct?

20 A. That's correct.

21 Q. The judge obviously did not agree with your
22 assessment of Mr. Ford's dangerousness; correct?

23 A. That's correct.

24 Q. Now, I'd like to focus on June 2007. Can we do
25 that?

1 A. Okay.

2 Q. Okay. So, in June 2007, you had to face another
3 decision about where to house Mr. Ford; correct?

4 A. That's correct.

5 Q. Okay. Now, let's talk, again, about what you did
6 not do in June 2007. You did not speak to the
7 superintendent at MCI-Cedar Junction, correct, about
8 Mr. Ford?

9 A. As I said earlier, I don't recall who I spoke to
10 then.

11 Q. You did not speak with the DDU supervisor about
12 Mr. Ford; correct?

13 A. I'm pretty certain I didn't speak to her, no.

14 Q. And, in fact, you can't recall discussing
15 Mr. Ford's placement with anyone in June 2007; correct?

16 A. No, I said earlier that it could have been Phil
17 Silva that I spoke to, a possibility of the
18 superintendent. I'm just not sure who I spoke to, if
19 anybody.

20 Q. Well, what you said at your deposition was you
21 just don't recall any conversation; isn't that what you
22 said?

23 A. I don't recall. That doesn't mean it didn't
24 happen. I just can't recall if it did or not.

25 Q. You also did not consider the fact that Mr. Ford

1 was a pretrial detainee; correct?

2 A. I considered it since I knew that he was a
3 pretrial detainee at that time, but to me the issue was
4 safety and security again.

5 Q. The fact that he was a pretrial detainee did not
6 impact your decision of where to house him; correct?

7 A. It did. I looked at Mr. Ford's past behavior,
8 and as a result, I felt that DDU was the most
9 appropriate placement.

10 Q. And you did know about -- you did intend that
11 Mr. Ford continue to serve his DDU sanction; correct?

12 A. Yes.

13 Q. And you did intend Mr. Ford continue to be
14 punished for the activity that led to that sanction;
15 correct?

16 A. You know, he's in there for safety and security
17 issues, and punitive aspect is a part of it.

18 Q. Now, in June 2007, you didn't notify Mr. Ford of
19 the basis of his being held in the DDU; correct?

20 A. I don't believe I did, no.

21 Q. So at your direction, DOC employees simply placed
22 Mr. Ford in solitary confinement without any notice to
23 him whatsoever about why he was being put there?

24 MS. DANIELE: Objection, your Honor. It's
25 not solitary confinement. There has been no testimony

1 as to that.

2 THE COURT: Rephrase.

3 MS. PIROZZOLO: I'll rephrase.

4 BY MS. PIROZZOLO:

5 Q. So in June 2007, at your direction, DOC employees
6 simply placed Mr. Ford in DDU without any notice at all
7 to him about why he was being put there?

8 A. I don't recall if he received any notice. I
9 didn't tell anybody to give him any notice, so, no.

10 Q. Now, I'd like to talk about July of 2007. Okay?

11 A. Okay.

12 Q. Now, that's when Mr. Ford was about four months
13 into his wrongful detainment in the DDU. Okay?

14 A. Okay.

15 Q. In July 2007, your office received a letter that
16 Mr. Ford wrote to Katherine [sic] Dennehy; correct?

17 A. When -- when is this?

18 Q. July 2007.

19 A. Commissioner Dennehy was not there in July. She
20 left in April of 2007.

21 Q. Did you receive a letter that Mr. Ford wrote to
22 her office?

23 A. Again, I don't recall.

24 (Document handed to the witness.)

25 THE WITNESS: Yes, I did.

1 BY MS. PIROZZOLO:

2 Q. And in the letter -- well, let me back up.

3 Ms. Dennehy's office gave Mr. Ford's letter to
4 you to do something about it; correct?

5 A. No. Actually, I was acting commissioner at this
6 time, so what I had done -- this letter did come into
7 the office. Obviously, Mr. Ford was mistaken thinking
8 that Ms. Dennehy was still the commissioner. I took the
9 letter, and I referred it to Ken Nelson, who is the
10 assistant deputy commissioner of the southern sector --

11 Q. Okay.

12 A. -- in terms of the Walpole and DDU.

13 Q. So you got Mr. Ford's letter at the time;
14 correct?

15 A. Well, the office did for sure.

16 Q. And in the letter, Mr. Ford asked the
17 commissioner -- well, let me back up.

18 He complained about his wrongful detention in
19 DDU; correct?

20 A. Can I read it first?

21 Q. Sure.

22 (Pause.)

23 A. Okay. I'm sorry. Can you repeat that question.

24 Q. Sure. Mr. Ford, in the letter said he was
25 wrongfully being held in the DDU; correct?

1 A. Yes.

2 Q. And he asked Ms. Dennehy to correct this
3 wrongdoing; correct?

4 A. Yes.

5 Q. But you didn't do anything about these concerns
6 when this letter was sent to your office?

7 A. I knew at the time that the proper placement for
8 Mr. Ford was the DDU; so, I was not going to change that
9 decision based on this letter.

10 Q. Now, I'd like to talk about September 2010.
11 Okay?

12 A. September 2010?

13 Q. Yes.

14 A. Okay.

15 Q. Now, that's the date -- well, on September 30th,
16 the judge issued the summary judgment order in this
17 case; correct?

18 A. Okay.

19 Q. Did you review the Court's decision?

20 A. I did not, no.

21 Q. The Court found that the DOC's policy upholding a
22 pretrial detainee in DDU based on a prior sentence was
23 unconstitutional; correct?

24 A. That's what I understand, yes.

25 Q. And more specifically, the Court found that you

1 violated Mr. Ford's substantive due process rights and
2 procedural due process rights; correct?

3 A. Okay.

4 Q. Well, do you know that?

5 A. I know it -- I do know that, yes.

6 Q. The Court also held that Mr. Ford was entitled to
7 a hearing before being held in the DDU; correct?

8 A. Okay.

9 Q. Do you know that?

10 A. I know it now.

11 Q. Now, as of -- so as of September 30, 2010, a
12 federal court had held that Mr. Ford was entitled to a
13 hearing before he could be held in the DDU; correct?

14 A. Okay.

15 Q. Now, following the receipt of that order by the
16 Court, Mr. Ford nevertheless continued to be held in the
17 DDU; correct?

18 A. Yes.

19 Q. No hearing about his placement was ever held
20 after the Court issued its order; correct?

21 A. I left in November of 2010, so I'm not sure what
22 happened after that.

23 Q. Okay.

24 A. I left on November 2nd.

25 Q. Okay. So between September 30, 2010, and

1 November 2nd, while you were in charge, no hearing was
2 ever held for Mr. Ford; correct?

3 A. That's correct.

4 Q. So, after being explicitly told that you were
5 supposed to have a hearing, you didn't hold a hearing?

6 A. Obviously, that's true.

7 Q. And you didn't instruct anyone that reported to
8 you to hold a hearing; correct?

9 A. I did not, no.

10 Q. So Mr. Ford was not placed in administrative
11 segregation in 2010; correct?

12 A. As I said after -- after November 2nd, I had no
13 idea what happened; so up til November 2nd, he wasn't.

14 Q. Just to be clear, your counsel was allowed to ask
15 you kind of what you would have done if DDU wasn't
16 available. Do you remember those questions?

17 A. I do.

18 Q. And I objected to those questions.

19 Now -- now, I'm asking you why didn't you put him
20 in admin -- why didn't you do whatever process you just
21 described in September or October 2010?

22 MR. DANIELE: Your Honor, I'm going to
23 object at this point. The Court gave us a specific
24 amount of time to determine what to do with Mr. Ford.

25 Mr. Bender has testified that he left on

1 November 2nd of 2010 and was not involved in that. So,
2 at this point, he -- the -- the implication is that he
3 continued to violate Mr. Ford's rights.

4 THE COURT: No. I'm not taking it
5 as -- well, the facts are the facts as to what happened
6 after my order, and we have the record on that, but I
7 think counsel is allowed to explore why changes were not
8 made.

9 BY MS. PIROZZOLO:

10 Q. Now, as of the time you left, no hearing had been
11 held; correct?

12 A. That's correct.

13 Q. Okay. And is it true you don't know anything
14 about what happened to Mr. Ford afterwards?

15 A. That's correct.

16 Q. Did you ever tell anyone as a departure memo or
17 things for my successor to keep track of, you know,
18 you've got to give Mr. Ford a hearing?

19 A. No.

20 Q. Okay. Now, you talked about administrative
21 segregation. Do you remember that?

22 A. I do.

23 Q. Okay. And those regulations are marked as
24 Exhibit 17; is that right?

25 A. That's correct.

1 Q. Now, administrative segregation, it says right in
2 the definition in the regulations in Exhibit 17, and
3 that's 423.06 that it's a temporary form of separation
4 from general population; correct?

5 A. That's correct.

6 Q. Holding someone for 375 days without review is
7 not a temporary placement; correct?

8 A. There's no set time on the temporary form, but as
9 I said earlier, there have been examples of inmates
10 being held longer based on the fact that we can't find
11 outside -- appropriate, adequate outside placement for
12 them. So there has been occasions where an inmate has
13 gone beyond that.

14 Q. My question wasn't has the department always
15 complied with administrative segregation being
16 temporary. My question was 375 days of holding someone
17 without review is not a temporary placement; correct?

18 A. You know, um, it's not temporary.

19 Q. Now, you were asked by the Court about -- now,
20 there's extensive review for this administrative
21 segregation; correct?

22 A. Yes.

23 Q. Review, health screening, review after 72 hours,
24 then periodic reviews quite frequently; correct?

25 A. That's correct.

1 Q. And you were asked what the purpose of that
2 review is; do you recall that?

3 A. I do.

4 Q. And you kind of said -- and I'm paraphrasing a
5 bit -- it's so people don't fall through cracks; right?

6 A. That's one of the reasons, yes.

7 Q. Okay. There are other reasons, aren't there?

8 A. There's a lot of reasons for it. Just -- just
9 the process of monitoring who you have in the
10 segregation units, in the SMU units, just knowing as a
11 deputy superintendent to know what they're there for, to
12 have contact with them periodically.

13 So, there's a lot of different reasons for that.
14 I'm not sure it's specifically spelled out however.

15 Q. Well, could you turn, sir, to the section of the
16 regs. It is page -- the numbering starts again, but
17 it's after the regulation itself and where the standard
18 operating procedures are -- are -- begin.

19 A. Yes.

20 Q. Okay. And if you turn to page 2 of Standard
21 Operating Procedure.

22 A. Okay.

23 Q. Okay. And if you look at Section B, do you see
24 that?

25 A. I do.

1 Q. Okay. And that Section B, on page 2, of Special
2 Operating Procedures talks about the purpose of the
3 review.

4 Do you see that?

5 A. I do.

6 Q. Okay. And I would like you to look at the
7 sentence that begins with "the," about four lines down.

8 Do you see that?

9 A. I do.

10 Q. Okay. And -- and the things that are supposed to
11 be reviewed are the reason for the placement; correct?

12 A. That's correct.

13 Q. The threat to institutional security; correct?

14 A. Yes.

15 Q. Pending disciplinary issues; correct?

16 A. Yes.

17 Q. Disciplinary sanctions; correct?

18 A. Yes.

19 Q. Classification issues; correct?

20 A. Correct.

21 Q. Enemy situations; correct?

22 A. Yes.

23 Q. Mental health issues; correct?

24 A. Yes.

25 Q. Attitude towards authority; correct?

1 A. Yes.

2 Q. Willingness and ability to live with others;
3 correct?

4 A. Yes.

5 Q. So these reasons aren't so that people don't fall
6 through the cracks; the reasons are to be -- to
7 determine whether they are appropriately housed in
8 administrative segregation; correct?

9 A. That's part of not falling through the cracks,
10 too, you know. So I just want to -- you know, I used
11 that term, but it was to monitor the status of that
12 inmate that -- and those are the ones you just read, the
13 different statuses of the inmate.

14 Q. So administrative segregation has this extensive
15 review to make sure people aren't held in administrative
16 segregation for ten years without anybody taking a
17 second look at whether they need to be segregated;
18 correct?

19 A. That's correct.

20 Q. And that's actually why the DDU was created;
21 right? So you wouldn't have to review people
22 periodically like you do administrative segregation?

23 A. We review them on a monthly basis in the -- in
24 the DDU.

25 Q. Now, what you can agree with me on is that

1 Mr. Ford did not receive the type of review that we just
2 read about in the Special Procedures for Administrative
3 Segregation; correct?

4 A. I'm not sure -- I'm not sure if he attended those
5 reviews, the monthly reviews that he -- that were
6 scheduled in the DDU.

7 Q. Let's just be clear on the monthly reviews.
8 Okay?

9 The monthly reviews aren't for the purpose of
10 determining whether someone can get out of DDU?

11 A. That's correct.

12 Q. Okay. The monthly reviews are is he going to get
13 credit for the month; right?

14 A. Well, the monthly review is the opportunity of
15 staff to talk to the inmate, to monitor the inmate's
16 behavior, to counsel the inmate if there's issues
17 related to his incarceration within the DDU. It's for a
18 variety of reasons, so it's similar in nature, but
19 you're right. The review is not to determine whether
20 they're getting out because they have a set sentence
21 while they're in there.

22 Q. Now, you never provided Mr. Ford with physical
23 screening when he returned to the DDU, as he would have
24 gotten if he was in administrative segregation; correct?

25 A. In terms of the medical screening?

1 Q. Yes.

2 A. I'm not sure what protocols occurred when he
3 first came in. When he came in in June, I'm not sure.

4 Q. Well, no one reviewed his status after 72 hours,
5 according to the procedures for administrative
6 segregation; correct?

7 A. But he wasn't in admin -- admin. segregation. He
8 was in the DDU. So he would have been seen --

9 Q. So that's my point.

10 A. Right.

11 Q. He didn't get any of the review that is built
12 into the protections of administrative segregation;
13 correct?

14 A. He got the monthly reviews. That was standard
15 for DDU inmates.

16 Q. He -- as far as you were concerned, he was going
17 to stay in DDU and serve out his sentence; correct?

18 A. As far as I was concerned, he posed a threat to
19 the security and safety of the institution, and that was
20 an appropriate placement for him.

21 Q. Now, DDU is the most restrictive portion of the
22 prison facility; correct?

23 A. Yeah, but I would say -- they have, in some
24 cases, more privileges than inmates in SMU. They have
25 TVs, access to TVs. There's some programming in the

1 DDU, but it is our most secure setting.

2 MS. PIROZZOLO: I have no further questions.

3 THE COURT: Thank you.

4 MS. DANIELE: I just have a couple, your
5 Honor.

6 THE COURT: Redirect.

7 REDIRECT EXAMINATION

8 BY MS. DANIELE:

9 Q. Deputy Commissioner Bender, between September
10 30th or possibly October 1st of 2010 and November 2nd,
11 when you left for your retirement, were you aware that
12 steps were being taken to determine appropriate
13 placement for Mr. Ford?

14 A. I don't --

15 MS. PIROZZOLO: I'm going to object.

16 THE COURT: Overruled.

17 THE WITNESS: I don't recall having
18 knowledge of that at the time, to be honest with you.

19 BY MS. DANIELE:

20 Q. Deputy Commissioner Bender, did Ford need to be
21 segregated in 2007 and 2008?

22 A. He did.

23 MS. DANIELE: I have no other questions.

24 THE COURT: Do you have anything further?

25 MS. PIROZZOLO: I have no further questions.

1 THE COURT: You may step down.

2 THE WITNESS: Thank you.

3 Do you want to take a ten-minute break now
4 before the next witness or do you want to --

5 MS. DANIELE: I would love to.

6 THE COURT: Okay. We'll do that then, take
7 our morning break.

8 THE CLERK: All rise. Court is in recess.

9 (Recess from 11:18 a.m. until 11:37 a.m.)

10 THE CLERK: All rise.

11 You may be seated.

12 THE COURT: Call your next witness.

13 MS. DANIELE: Thank you, your Honor.

14 The defense calls Peter St. Amand.

15 THE CLERK: Please raise your right hand.

16 PETER ST. AMAND, SWORN

17 THE CLERK: Please be seated. Please state
18 your full name, spelling your last name for the record.

19 THE WITNESS: Peter Raymond St. Amand, S-T.
20 A-M-A-N-D.

21 DIRECT EXAMINATION

22 BY MS. DANIEL:

23 Q. Good morning, Superintendent St. Amand.

24 Could you please tell this Court how you're
25 employed currently.

1 A. I'm retired from the Department of Corrections.

2 Q. And prior to -- when did you retire?

3 A. December of last year, 2010.

4 THE COURT: I'm sorry. December?

5 THE WITNESS: December 2010.

6 THE COURT: Okay.

7 BY MS. DANIELE:

8 Q. And prior to your retirement, how were you
9 employed with the department?

10 A. From -- for the year 2010, I was a captain at
11 Mass. Treatment Center.

12 Q. When did that start?

13 A. December 2009.

14 Q. And in December of 2009, how were you employed?

15 A. Superintendent, MCI-Cedar Junction.

16 Q. When did you become superintendent of Cedar
17 Junction?

18 A. May of 2007.

19 Q. And in December of 2009, why did you resign your
20 position as superintendent at -- or change positions
21 from superintendent at MCI-Cedar Junction and become a
22 captain?

23 A. Personal choices for retirement.

24 Q. So you were not removed by anyone?

25 A. No.

1 Q. Prior to May of 2007, when you became
2 superintendent of Cedar Junction, what was your position
3 with the department?

4 A. Deputy Superintendent of Operations at MCI-Cedar
5 Junction since 2005.

6 Q. Could you briefly tell the Court from the time
7 you began working for the department up through 2005
8 what your employment history is.

9 A. I started working for the department in November
10 of 1978. I worked at MCI-Norfolk for the first part of
11 my career as a correctional officer, a sergeant, and
12 lieutenant.

13 I then went to Old Colony Correctional Center,
14 and I was a lieutenant and a captain. I was the
15 Director of Security at MCI-Framingham for about two to
16 three years; Deputy of Operations at Baystate
17 Correctional Center for about two years; six years at
18 MCI-Concord as the Deputy of Operations; two years as
19 central transportation on -- as the director; and then I
20 went to MCI-Cedar Junction.

21 Q. In January of 2007, what was your position with
22 the department?

23 A. Deputy Superintendent of Operations at MCI-Cedar
24 Junction.

25 Q. And what were your responsibilities?

1 A. I overseen the security for MCI-Cedar Junction,
2 food services, the maintenance department.

3 Q. Did you have any responsibilities with
4 the -- with regard to the Department Disciplinary
5 Unit -- or I'm going to refer to it as the DDU from now
6 on -- in January of 2007?

7 A. On a day-to-day basis, no. If there was an
8 emergency in the unit, I would have -- I would be
9 responsible for the team that went in to take care of
10 the emergencies, but that would be it.

11 Q. The day-to-day operations of the Department
12 Disciplinary Unit in January of 2007, what was the title
13 of the individual that was responsible for that?

14 A. Deputy Superintendent --

15 Q. And --

16 A. -- of the Special Management Units.

17 Q. When you became superintendent in May of 2007,
18 how many deputy superintendents were there?

19 A. It was dropped down from three to two at that
20 time.

21 Q. Could you just briefly tell the Court how the
22 structure changed.

23 A. There -- for the first two years I was there,
24 there was three superintendents -- three deputy
25 superintendents. One took care of Classification and

1 Treatment; one took care of the General Operations; and
2 one took care of DDU, SMU, and the Health Service Unit.

3 And in 2007, when I became superintendent, we
4 reduced it to two deputy superintendents and a director
5 of the DDU. The Deputy of Operations then overseeing
6 the director of DDU.

7 Q. In January of 2007, did the Deputy Superintendent
8 of the DDU report to you?

9 A. When in 2007?

10 Q. In January of 2007 --

11 A. No.

12 Q. -- when you were the Deputy of Operations?

13 A. The Deputy of DDU reported directly to the
14 superintendent.

15 Q. Who was the superintendent in January of 2007?

16 A. John Marshall.

17 Q. In January of 2007, did you have any
18 decision-making authority with regard to anyone housed
19 in the DDU?

20 A. No, I didn't.

21 Q. Would it be fair to say that in January of 2007,
22 you didn't have a knowledge of the inmates housed in the
23 DDU either?

24 A. General knowledge, but that would be it, not
25 thorough knowledge of the inmates that were in there.

1 Q. You became superintendent in May of 2007?

2 A. That's correct.

3 Q. What were your responsibilities as
4 superintendent?

5 A. Oversee the operations of the entire -- of
6 MCI-Cedar Junction and the DDU.

7 Q. What were your responsibilities for overseeing
8 the DDU as superintendent?

9 A. Care and custody of the inmates in there, making
10 sure that they were get -- that mental health rounds
11 were being made, medical rounds; that the director was
12 doing her job in the unit.

13 Q. In May of 2007, when you were superintendent, who
14 was the director of the DDU?

15 A. Lynn Bissonette.

16 Q. Did you play any role in placing --

17 A. I'm sorry. It was Dale Bissonette.

18 Q. Thank you.

19 Did you play any role in placing inmates in the
20 DDU as superintendent of MCI-Cedar Junction?

21 A. No, I didn't.

22 Q. Did you have any authority to place an inmate in
23 the DDU when you were superintendent at MCI-Cedar
24 Junction?

25 A. There is a list made up of when an inmate

1 receives a disciplinary sanction to go into DDU, and we
2 just basically went right by that list.

3 Q. Did you have the authority to disregard that
4 list?

5 A. No, I didn't.

6 Q. As superintendent of MCI-Cedar Junction, what was
7 your main concern in operating the prison?

8 A. Security of the staff and inmates.

9 Q. In January of 2007, did you know that Albert Ford
10 was in the DDU as a pretrial detainee?

11 A. If it was brought up at one of the morning
12 meetings we had every day, then I would; otherwise, I
13 wouldn't have known.

14 Q. Would you have had any responsibility for that as
15 Deputy Superintendent of Operations in January of 2007?

16 A. No, I wouldn't.

17 Q. Moving to June of 2007, Mr. Ford returned to the
18 custody of the Department of Correction and to the DDU.

19 Did you have any part in the decision to place
20 him in the DDU --

21 A. No, I didn't.

22 Q. -- at that time?

23 Did you have the ability to remove him from the
24 DDU?

25 A. No, I didn't.

1 THE COURT: As superintendent, can you
2 reduce the sentence in the DDU?

3 THE WITNESS: The only person who can reduce
4 the sentence is the deputy commissioner because it's all
5 done through a disciplinary process.

6 THE COURT: And where did you fit in in the
7 disciplinary process, if at all?

8 THE WITNESS: For inmates going to DDU, I
9 didn't. The only thing where I fit in is if I
10 were -- once an inmate does an infraction in the
11 instit -- my institution or the institution I was
12 working at, I would have the right to refer him for a
13 disciplinary sanction -- for a disciplinary hearing for
14 DDU, and that would be the end of it.

15 THE COURT: Thank you.

16 BY MS. DANIELE:

17 Q. Superintendent St. Armand, if you believed
18 a -- when you were superintendent, if you believed an
19 inmate's behavior warranted reduction in his DDU
20 sanction, could you do anything about that?

21 A. We didn't do it when I first became super, but
22 once we started getting a lot of inmates that were
23 getting set to go there because of problems in the
24 department, then I was authorized to -- I sent the
25 list -- I'm not sure if it was monthly or quarterly for

1 the reduced sentences of guys that were getting close to
2 getting out.

3 Q. And who did you send that to?

4 A. Mr. Bender.

5 Q. Did you make any final decisions with regard to
6 that list?

7 A. No.

8 Q. When Mr. Ford was returned to the department in
9 June of 2007, what was your knowledge of him as an
10 inmate?

11 A. The -- the day-to-day, I would have received D
12 reports, and I knew that he was in there for an incident
13 that happened in 2002.

14 Q. Did you have any other information with regard to
15 Mr. Ford?

16 A. I didn't go back to -- every one of the dates is
17 in there.

18 Q. Did you have any reason to get any further
19 information on Mr. Ford?

20 A. No.

21 Q. Would you ever second guess Deputy Commissioner
22 Bender's decision to place Mr. Ford in the DDU in June
23 of 2007?

24 A. No, I wouldn't.

25 Q. If Mr. Ford had -- strike that.

1 Superintendent St. Armand, are you familiar with
2 the disciplinary infraction from 2002 that Mr. Ford had
3 been charged with?

4 A. Yes.

5 Q. Are you familiar with the individuals involved in
6 that report?

7 A. I am now, yes.

8 Q. Based on that knowledge, if Mr. Ford were to have
9 been sent to Cedar Junction, but not to the DDU, as a
10 pretrial detainee, where would you have placed him?

11 A. In the segregation unit.

12 Q. And why is that?

13 MS. CHAUDHARY: Objection. Speculation.

14 THE COURT: As far as I understand your
15 testimony, you're not the one that does the placement.

16 THE WITNESS: I am -- if he's not going to
17 DDU, I am the one who does the placements. It's
18 two -- the Department Disciplinary Unit is a department
19 unit compared to the institution itself.

20 THE COURT: So the question is if he came in
21 and was not going to DDU?

22 MS. DANIELE: Yes, your Honor, and I
23 apologize. I will -- I will make this -- I'll make this
24 clear and lay a foundation for you.

25 THE COURT: Thank you.

1 BY MS. DANIELE:

2 Q. Superintendent St. Armand, can you describe the
3 physical layout of MCI-Cedar Junction?

4 A. The Department Disciplinary Unit is attached to
5 the facility. It's actually built in a wall outside of
6 the wall of the correct -- of MCI-Cedar Junction.

7 Inside Cedar Junction, you have the orientation
8 unit. You have a hospital wing. You have the Special
9 Management Unit, which is the segregation unit. You
10 have -- and then you have general housing units.

11 THE COURT: When pretrial detainees are
12 generally sent, aren't they kept separate from the
13 general population?

14 THE WITNESS: No.

15 THE COURT: No? In the federal system we
16 keep them separate.

17 THE WITNESS: The only ones that we're
18 required to keep separate are the federal detainees that
19 we hold there.

20 THE COURT: All right. So those you do keep
21 separate?

22 THE WITNESS: Yes.

23 THE COURT: Okay. Thank you.

24 BY MS. DANIELE:

25 Q. Superintendent St. Armand, with regard to the

1 housing unit at MCI-Cedar Junction, what is your
2 responsibility over the general housing units and the
3 Special Management Unit or Ten Block?

4 A. I'm not sure what you mean.

5 Q. As superintendent of MCI-Cedar Junction, what is
6 your responsibility for the operations of the general
7 housing units and -- and Ten Block?

8 A. To ensure that inmates who are enemies are kept
9 separated from each other. This is all done through the
10 two deputies and the Director of Classification.

11 The inmates in the Special Management Unit are
12 reviewed on a regular basis. We do them almost every
13 day at our morning meetings. The inmates that go or
14 come into the facility that they're all properly
15 screened. They go into the orientation unit where
16 they're basically equated to which housing unit they're
17 best suited for.

18 We have two restricted units that we have to
19 manage where they get classified. I believe it's up to
20 three months for disciplinary infractions inside the
21 facility, where they're housed by themselves. They
22 don't get to mingle with the rest of the general
23 population.

24 THE COURT: And that's segregation?

25 THE WITNESS: No, it's restricted units.

1 They -- they're not in restraints when they come out of
2 their room. They come out of their room for their food,
3 instead of having it brought to them; but they get to go
4 out in their own rec. yard. They can't go out into the
5 main yards.

6 THE COURT: And that's for --

7 THE WITNESS: It's a step down from
8 segregation.

9 THE COURT: And that's for disciplinary
10 infractions --

11 THE WITNESS: Infractions.

12 THE COURT: -- as well?

13 THE WITNESS: Yes.

14 BY MS. DANIELE:

15 Q. Superintendent St. Armand, to the best of your
16 knowledge, do those -- the restricted units still exist
17 at MCI-Cedar Junction?

18 A. They did when I left in 2009. I don't know if
19 they still do. Oh, actually, no, I think -- no, we
20 closed them up because we went into the -- as a
21 receiving building in 2009. In July, September 2009, is
22 when they were, I believe, closed.

23 Q. If -- could you describe to the Court the process
24 that is taken when an inmate comes to MCI-Cedar Junction
25 as either a new commitment or a transfer to MCI-Cedar

1 Junction?

2 A. When they first come into the booking area,
3 they're IMS, Inmate Management Screens, which has all
4 the information about the inmate. It will be reviewed
5 by whoever the booking staff are, such as enemy
6 situations, staff conflicts, to ensure that they can go
7 out into the orientation unit.

8 Q. And then --

9 A. They're seen by mental health; they're seen by
10 medicals.

11 Q. And after that, they go to the orientation unit?

12 A. As long as everything's clear.

13 Q. What happens at that point?

14 A. They would be placed in the orientation unit
15 on -- awaiting action status, which means they're not
16 let out with the other inmates for approximately two to
17 three days, until they get interviewed by a counselor.
18 I believe -- I'm not sure if the IPS team interviews all
19 of them or just if they have some type of problems.

20 And then they're let out into the orientation
21 unit, which runs by itself, meaning they get fed in the
22 unit. They rec. by themselves in the back of the unit,
23 and that usually lasts for one to two months before they
24 go to a general population unit.

25 Q. Do any of those inmates -- when those inmates are

1 placed after they're -- after the orientation unit, do
2 any of those inmates get placed in the DDU?

3 A. Not unless they receive the sanction before the
4 DDU placement.

5 Q. Can you place any of them in the DDU?

6 A. No.

7 Q. In June of 2007, when Mr. Ford was returned as a
8 pretrial detainee, if he had not been placed in the DDU
9 by Deputy Commissioner Bender, where would he have been
10 housed?

11 A. The segregation unit.

12 MS. CHAUDHARY: Objection.

13 THE COURT: Overruled.

14 BY MS. DANIELE:

15 Q. Why is that?

16 A. One of the two officers that was stabbed,
17 allegedly stabbed in 2002, still worked in the facility.

18 THE COURT: Where did he work?

19 THE WITNESS: On the three to eleven shift,
20 and he worked throughout the facility. He didn't work
21 in a special spot.

22 THE COURT: So you always move the inmate;
23 you wouldn't have modified his position?

24 THE WITNESS: It was that, and there was two
25 other reports concerning gang activity, and we would

1 have to make sure that was cleared up --

2 MS. CHAUDHARY: Objection.

3 THE WITNESS: -- before we put them out in
4 the population.

5 THE COURT: Overruled.

6 As I understand it though when Mr. Ford was
7 returned in June of '07 -- well, let me ask you this:
8 Did you do an evaluation as to where he should go or did
9 you --

10 THE WITNESS: No, he automatically went to
11 DDU because myself, along with the department, was under
12 the impression that we could have him finish his
13 sentence.

14 THE COURT: Otherwise you would have looked
15 at his file?

16 THE WITNESS: Yes.

17 THE COURT: And if there was a conflict with
18 a guard, the -- generally, the inmate would be moved.
19 That would affect the inmate's location, as opposed to
20 the guard's --

21 THE WITNESS: Correct.

22 THE COURT: -- duties?

23 All right. Thank you.

24 BY MS. DANIELE:

25 Q. Superintendent St. Armand, the -- you testified

1 that Mr. Ford would have been placed in the SMU on the
2 Ten Block.

3 Could you describe the conditions of confinement
4 in Ten Block?

5 A. They get out of their cell one hour a day for
6 activities outside of the unit. They exercise by
7 themselves. They're in restraints to and from there.
8 They -- I believe, they're allowed a phone call every
9 day or at least four a week, if not every day. They're
10 allowed two visits a week. They're --

11 THE COURT: Ten Block you're saying is --

12 THE WITNESS: It's a Special Management
13 Unit.

14 THE COURT: So this is segregation?

15 THE WITNESS: West wing segregation you've
16 heard today: Segregation, Special Management Unit, Ten
17 Block, it's all the same building. It holds 50 inmates.

18 THE COURT: So this is the SMU --

19 THE WITNESS: Yes.

20 THE COURT: -- that we've heard about before
21 this one?

22 THE WITNESS: Correct.

23 BY MS. DANIELE:

24 Q. How much time a week do they have out of their
25 cells?

1 A. Five hours.

2 Q. Do inmates in the -- in Ten Block have TVs?

3 A. No.

4 Q. Do they have radios?

5 A. Some of them, I believe, have Walkmans.

6 Q. How do inmates leave their cell in Ten Block?

7 A. Waist chains and leg irons.

8 Q. Always?

9 A. Or cuffed behind their back actually and leg
10 irons.

11 Q. Always?

12 A. Unless they're -- there's -- always.

13 If they're special restraint status, then they're
14 left in waist chains -- they're placed in waist chains
15 because they don't get out of them while they're out in
16 the yard.

17 Q. Is there any programming in Ten Block?

18 A. Not that I recall in 2007.

19 MS. DANIELE: Your Honor, I have photographs
20 of this unit that are similar to the DDU and the general
21 population ones. Counsel has objected to these being
22 admitted. I intend, at this point, to admit them
23 through Mr. St. Armand. I'm assuming they have an
24 objection.

25 MS. CHAUDHARY: Yes. We object to the

1 comparison, the relevant comparison, not to the
2 photographs themselves.

3 THE COURT: All right. So with that
4 understanding, I'll admit them collectively as
5 Exhibit 19.

6 MS. DANIELE: I apologize --

7 THE COURT: But I want to understand
8 something. Your point, I gather, is that the SMU was
9 quite restrictive?

10 MS. DANIELE: Yes.

11 THE WITNESS: Yes.

12 THE COURT: All right. But in the SMU, you
13 get the reviews that we've talked about?

14 THE WITNESS: Yes.

15 THE COURT: So what's the difference between
16 the level of restriction in SMU and the DDU? Is the
17 difference mostly the physical doors, the grills?

18 THE WITNESS: The grills. That's definitely
19 a difference. I think the biggest difference of the two
20 is: One, you're there to be reviewed, to be either
21 moved to another facility or to be released out in
22 population after an incident; and the other one is a
23 disciplinary sanction where you're placed there until a
24 certain date.

25 And in DDU, you've got to earn your

1 privileges. You get them -- you have to lose them in
2 Ten Block. That's --

3 THE COURT: That's fundamentally the
4 difference?

5 THE WITNESS: Yes.

6 (Exhibit No. 19 was admitted into evidence.)

7 MS. DANIELE: May I approach the witness,
8 your Honor?

9 THE COURT: Yes.

10 BY MS. DANIELE:

11 Q. Superintendent St. Armand, I'm handing you a
12 packet of photos that has been identified as Defendant's
13 Exhibit No. 19.

14 Could you identify the first of the photos with
15 the exhibit sticker on it, please.

16 A. That's one of the tiers of Ten Block.

17 Q. And what does that photo show?

18 A. The hallway with the windows outside of the
19 cells, the cell doors and in between each cell door is a
20 sliding steel door.

21 Q. The photo -- I'm going to go individually each
22 photo.

23 The photo next to that, what does that
24 depict?

25 A. That's these barred cell doors that are in the

1 units.

2 Q. The middle photo in the top, what does that
3 depict?

4 A. That's the solid steel door.

5 Q. And can you describe what that solid steel door
6 is, please.

7 A. It's utilized basically at night. An inmate may
8 request for it to be closed because of the light that
9 comes in and the noise on the tier. Otherwise, we only
10 close it if an inmate's being disruptive.

11 Q. The --

12 A. It only can be -- the inmate has to be reviewed
13 every shift by the commander.

14 Q. If the solid door is closed?

15 A. Yes, because of the size of that little window in
16 it.

17 Q. The photograph in the upper right, could you tell
18 us what that shows.

19 A. That's the furniture inside of the cells.

20 Q. In Ten Block?

21 A. In Ten Block.

22 Q. And the photo to the left, could you --

23 A. That's the recreational cages that are utilized
24 with the inmates in Ten Block.

25 Q. Superintendent St. Armand, do you know if there

1 is a size difference in the cells between the DDU and
2 Ten Block?

3 A. I'm almost positive that the DDU is a little bit
4 bigger.

5 Q. The recreation cages that -- for Ten Block, are
6 they utilized in the same fashion as the recreation
7 cages for the DDU?

8 A. Yes, they are.

9 Q. Are they approximately the same size as the DDU?

10 A. If anything, Ten Block's a little bit bigger.

11 Q. How many inmates at once are in a recreation
12 cage?

13 A. They're both the same, one inmate.

14 Q. And do multiple inmates go out in separate cages
15 at once for Ten Block?

16 A. Yes.

17 Q. How about for the DDU?

18 A. Yes. The only difference is if you're on a
19 special status, then you go out by yourself.

20 Q. If inmates are out there together, can they
21 talk --

22 A. Yes.

23 Q. -- to one another?

24 Are any of the visits for any population at Cedar
25 Junction contact visits?

1 A. Not in 2007 and '8.

2 Q. Superintendent St. Armand, if an inmate has to go
3 to the bathroom, to use a toilet in a cell, in Ten
4 Block, can they be seen from the tier?

5 A. Yes.

6 Q. Is that the case in any --

7 A. Well, they can be seen if you're walking down the
8 tier.

9 Q. If an inmate is using the toilet in the DDU, can
10 they be seen from the tier?

11 A. A smaller section because you'd have to look in
12 your windows, which you're required to when you walk
13 down the tier, but not at a general glance because they
14 have the solid doors.

15 Q. Superintendent St. Armand, do you recall whether
16 or not Mr. Ford was a level A security? We discussed
17 level A security risk with Deputy Commissioner Bender
18 when he was here.

19 Do you recall whether or not Mr. Ford was a
20 level A security risk?

21 A. Right now I really don't recall.

22 Q. If he were a level A --

23 A. Uh-huh.

24 Q. -- does that change any of his housing at
25 MCI-Cedar Junction?

1 A. It wouldn't because it's a maximum facility.

2 Q. If -- would the frequency of Mr. Ford's cell
3 movement change if he was a level A?

4 A. The -- I'm almost positive the procedure back in
5 2007 was they get moved every month to a different cell.

6 Q. So once a month Mr. Ford would be moved?

7 A. Correct.

8 MS. DANIELE: Could I have one moment, your
9 Honor?

10 (Pause.)

11 BY MS. DANIELE:

12 Q. Why is that?

13 A. Tampering with the cells, making -- see what they
14 can see from outside their cell windows. The majority
15 of it's tampering with the cells.

16 Q. Superintendent St. Armand, there was testimony
17 during Deputy Commissioner Bender's testimony that
18 Mr. Ford complained to him about his housing in the DDU.

19 Were you ever made aware that Mr. Ford had
20 complained about his housing in the DDU after June of
21 2007?

22 A. At -- I don't remember it from June of 2007. I
23 remember it when I did my deposition; that I was told a
24 letter went through my office.

25 Q. Is there anything that would refresh your

1 recollection of what occurred then?

2 A. I'm not sure if I see the letter if it would help
3 or not.

4 MS. DANIELE: Your Honor, may I approach the
5 witness?

6 THE COURT: Yes.

7 BY MS. DANIELE:

8 Q. Deputy -- Superintendent St. Armand, I'm handing
9 you a letter to Albert Ford, from ADC Kenneth Nelson.

10 Does that refresh your recollection as to whether
11 or not you were aware that Mr. Ford had complained about
12 his being placed in the DDU as a 52A, in the summer of
13 2007?

14 A. Yes.

15 Q. And did somebody in the department respond to
16 Mr. Ford with regard to his complaint?

17 A. Yes. Deputy Commissioner -- Assistant Deputy
18 Commissioner Ken Nelson.

19 Q. And did he inform Mr. Ford that -- what did he
20 tell Mr. Ford?

21 A. That he was serving the remainder of his ten-year
22 DDU sentence that was received on September 4, 2003.

23 Q. And when was that letter dated?

24 A. August 23rd, 2007.

25 MS. DANIELE: I have no further questions,

1 your Honor.

2 THE COURT: Is there a reason -- we've had
3 witnesses read from two exhibits now. Is there a reason
4 that they're not being put into evidence?

5 MS. DANIELE: I'm just not because the other
6 one wasn't, and I figured the testimony was sufficient.

7 MS. PIROZZOLO: I'm happy to offer them or
8 put them in.

9 MS. DANIELE: If there's no objection --

10 MS. PIROZZOLO: They weren't on our exhibit
11 list, and I didn't want to have problems with that.

12 THE COURT: Well, if I -- if there are no
13 problems, what I would like to mark as Exhibit 20 is the
14 first letter that was the notice that Mr. Bender
15 testified to, and as Exhibit 21 would be the letter that
16 this witness just testified to. Okay.

17 (Exhibit Nos. 20 and 21 were admitted
18 into evidence.)

19 MS. PIROZZOLO: Could I also --

20 THE COURT: Was there more?

21 MS. PIROZZOLO: There was an email from
22 Ms. Mici to Mr. Bender, in January of 2007.

23 THE COURT: Is there an objection to that?

24 MS. DANIELE: No, your Honor.

25 THE COURT: It makes it easier if I actually

1 have the document. So we'll mark the email as
2 Exhibit 22.

3 (Exhibit No. 22 was admitted into evidence.)

4 MS. PIROZZOLO: May I provide that at the
5 break?

6 THE COURT: Yes.

7 MS. PIROZZOLO: The email.

8 Thank you, your Honor.

9 THE COURT: Cross-examination?

10 CROSS-EXAMINATION

11 BY MS. CHAUDHARY:

12 Q. Good morning, Mr. St. Amand.

13 A. Good morning.

14 Q. You agree that Mr. Ford could be housed in the
15 general population of MCI-Cedar Junction; is that
16 correct?

17 A. From my deposition, I wasn't aware of -- it was
18 more of a general statement for inmates that come in. I
19 didn't realize that -- the officers' names that he had
20 assaulted and some of the inmates that were on his enemy
21 list; but at the deposition, I did say he could go to
22 general population.

23 Q. And do you recall at your deposition being asked
24 specifically if there were any other units of Cedar
25 Junction that were capable of housing Mr. Ford?

1 Do you recall being asked that question?

2 A. No.

3 Q. If I could direct you to the binder right in
4 front of you. Tab one of that binder is a copy of your
5 deposition transcript in this case.

6 A. Okay.

7 Q. I'd like to direct your attention to page 205,
8 the bottom of page 205, line 23.

9 A. I don't see any page numbers.

10 Q. They should be at the top.

11 A. Oh, okay. Sorry. Where on the page?

12 Q. Line 23, Mr. Syrett asked "And do you think there
13 are any units at Cedar Junction that are capable of
14 housing Mr. Ford?"

15 And then on the next page, line 10, you say, "He
16 would have to go to one of the orientation units, which
17 is the first step of anyone who goes to -- to/from DDU,
18 and then he would be processed."

19 Do you recall giving that answer?

20 A. Yes, I do.

21 Q. And do you recall Mr. Syrett asking "And where do
22 you think he," referring to Mr. Ford, "could be placed
23 after the orientation unit?"

24 And you said "He would probably remain in what
25 they call the east wing of my facility."

1 Is that correct?

2 A. Correct.

3 Q. And the east wing is part of the general
4 population; is that correct?

5 A. Correct.

6 Q. And that was your deposition testimony?

7 A. Yes.

8 Q. And that's not your testimony today?

9 A. No, it's not because I didn't see those reports
10 at the deposition. I wasn't aware of -- I was unaware
11 that he took a nurse hostage. I hadn't read all of the
12 packages since I've been at Cedar Junction because all
13 of that had happened in 2002.

14 And when I was asked if, in fact, I would put him
15 in population, I needed to review everything that I
16 would have had that day; and in the deposition, I didn't
17 have any of this information.

18 Q. And so you had never reviewed that information
19 after you became superintendent in May 2007 --

20 A. No.

21 Q. -- is that correct?

22 A. No, I haven't.

23 Q. And you never reviewed it when Mr. Ford returned
24 to Cedar Junction as a pretrial detainee in June 2007;
25 is that correct?

1 A. There was no need to, I was told he was going to
2 DDU.

3 Q. But you were aware that Mr. Ford was challenging
4 his confinement in the DDU as a --

5 A. Yes, I was.

6 Q. -- a pretrial detainee? That's correct?

7 A. Yes.

8 Q. Okay. And, in fact, someone -- you or someone
9 under your supervision drafted a letter to Mr. Ford
10 explaining that he was properly held in DDU?

11 A. Correct.

12 THE COURT: I'm going to ask you to speak
13 slower.

14 MS. CHAUDHARY: My apologies.

15 BY MS. CHAUDHARY:

16 Q. Mr. St. Amand, as the former superintendent of
17 MCI-Cedar Junction, you're familiar with the layout of
18 the facility; correct?

19 A. Yes.

20 Q. Including the areas used by general population
21 inmates; correct?

22 A. Yes.

23 Q. I'd like to show you a photo, tab 2 in your
24 binder, and it's tab 16 in the binder that we provided
25 to the Judge yesterday.

1 Is this a true and accurate representation of the
2 prison yard used by the general population at MCI-Cedar
3 Junction?

4 A. In 2007, no.

5 Q. And how -- how would it have been different in
6 2007?

7 A. This doesn't appear to be a fence dividing the
8 two yards. It seems to be like they might have removed
9 it since they switched his status. This here -- there
10 would have been two separate yards.

11 Q. But other than a fence dividing this into two
12 separate yards, other than that, is this an accurate
13 representation of the prison yard in Cedar Junction in
14 2007?

15 A. And there should be a softball field.

16 Q. And there should be a softball field?

17 A. Yes.

18 MS. CHAUDHARY: I'd like to offer this into
19 evidence.

20 MS. DANIELE: I would object, your Honor, on
21 the basis of relevance. There has been no testimony
22 that -- by anyone that Mr. Ford would have been
23 appropriate for general population.

24 THE COURT: Objection overruled.

25 We'll mark as Exhibit 22 the photograph of

1 the recreation field.

2 (Exhibit No. 22 was admitted into evidence.)

3 BY MS. CHAUDHARY:

4 Q. Mr. St. Amand, if Mr. Ford was housed in the east
5 wing of general population, he would have had access to
6 the prison guard -- to the prison yard -- excuse
7 me -- shown here; correct?

8 A. Once he got out of orientation.

9 Q. And he would have had access to this yard for
10 approximately two and a half hours a day; is that
11 correct?

12 A. Yes.

13 Q. And I'd like to show you another photo, tab 3 in
14 the binder in front of you. It's tab 15 in the binder
15 we provided to the Court.

16 Mr. St. Amand, is this a true and accurate
17 representation of a general population cell at MCI-Cedar
18 Junction? I apologize it's a little dark.

19 A. For the west wing.

20 Q. It's for the west wing. And are cells in the
21 east wing substantially different?

22 A. Totally different. It's more so. In the west
23 wing, you have two tiers that run all the way around the
24 unit. They have outside windows in every cell. In the
25 east wing, it's three tiers, all solid bars, so you can

1 see anything the inmate does, and it's only skylights.

2 Q. I'd like to show you the next tab in your binder,
3 tab 4.

4 And is this a photo of a cell in the east
5 wing at MCI-Cedar Junction?

6 A. Yes.

7 Q. And is it a true and accurate representation to
8 your knowledge?

9 A. Yes.

10 MS. CHAUDHARY: I'd like to offer this into
11 evidence.

12 THE COURT: Which one?

13 MS. CHAUDHARY: This photo here. It's tab
14 14 in the binder that was provided to the Court.

15 MS. DANIELE: Your Honor, the defendants
16 have the same objection to any testimony and any
17 evidence regarding the general population. Just note my
18 running objection.

19 THE COURT: Why don't I note your objection,
20 and I'm overruling it.

21 Exhibit 23 will be the photograph of
22 the -- now I'm lost though is this the east wing or the
23 west wing?

24 THE WITNESS: The last photo with the bars?

25 THE COURT: Yes.

1 THE WITNESS: That's the east wing.

2 THE COURT: East wing.

3 THE WITNESS: The one prior to it -- it
4 actually has a solid door -- that's the west wing.

5 THE COURT: The west wing.

6 MS. CHAUDHARY: And I'd also like to offer
7 into evidence the photo of the west wing as well.

8 THE COURT: Okay. So the east wing photo
9 will be Exhibit 23; the west wing photo will be
10 Exhibit 24.

11 (Exhibit Nos. 23 and 24 were admitted into
12 evidence.)

13 BY MS. CHAUDHARY:

14 Q. Mr. St. Amand, if an inmate was housed in the
15 photo depicted here, he would be housed in -- excuse
16 me -- housed in a cell depicted here, he would not have
17 a solid metal door on his cell; is that correct?

18 A. Correct.

19 Q. An inmate housed in this cell would be able to
20 speak to other inmates through the bars of the cell; is
21 that correct?

22 A. Correct.

23 Q. And if an inmate was housed in the photo depicted
24 in Exhibit 24 of the west wing, that inmate would have a
25 window in his cell; correct?

1 A. Section 3?

2 Q. Yes.

3 A. Yes.

4 Q. And that open window, if that's depicted in the
5 photo, would provide natural light and fresh air to the
6 inmate housed in that cell; is that correct?

7 A. Correct.

8 Q. And an inmate in general population would spend
9 about half his day in the cell -- in the cells depicted
10 in Exhibits 23 and 24; is that correct?

11 A. A little over half his day, yeah.

12 Q. And inmates in the DDU, by contrast, are locked
13 in their cell for 23 hours a day?

14 A. Correct.

15 Q. I'd like to talk a little bit about
16 administrative segregation. You discussed that with
17 Ms. Daniele.

18 The DOC has regulations governing -- governing
19 Special Management Units; correct?

20 A. Correct.

21 Q. And you're familiar with those regulations;
22 correct?

23 A. Yes.

24 Q. And the DOC also has standard operating
25 procedures for Special Management Units?

1 A. Correct.

2 Q. And you're familiar with those as well?

3 A. Yes.

4 Q. I believe you testified that the Special
5 Management Unit at MCI-Cedar Junction is also known as
6 the Ten Block; correct?

7 A. Correct.

8 Q. And the DOC regulations require that the
9 commissioner, superintendent, or his designee approve an
10 inmate's placement in administrative segregation; is
11 that correct?

12 A. Correct.

13 Q. And I believe you would agree that an officer
14 just can't grab someone and walk them into the Ten
15 Block; is that correct?

16 A. No, they can't.

17 Q. Because there are certain procedures that are
18 required prior to placing an inmate in administrative
19 segregation; correct?

20 A. Correct.

21 Q. And you never approved Mr. Ford's placement in
22 administrative segregation in June 2007; correct?

23 A. No.

24 Q. And you never approved Mr. Ford's placement in
25 administrative segregation in April of 2008; is that

1 correct?

2 A. Correct.

3 Q. And no other placement, as far as you know, other
4 than the DDU was considered for Mr. Ford when he was
5 placed as a pretrial detainee in June 2007; is that
6 correct?

7 A. Correct.

8 Q. And no other placement was considered for
9 Mr. Ford when he was placed as a convicted inmate in
10 June 2008; correct?

11 A. Correct.

12 Q. The DOC regulations require a physical screening
13 of an inmate before his placement in administrative
14 segregation; correct?

15 A. Correct.

16 Q. They also require the review of an inmate's
17 placement within 72 hours of being placed in
18 administrative segregation?

19 A. Correct.

20 Q. And it's also true that inmates in administrative
21 segregation are entitled to have their status reviewed
22 every seven days for the first two months of their
23 placement; correct?

24 A. Correct.

25 Q. And then that status is reviewed at least every

1 30 days thereafter?

2 A. Correct.

3 Q. And those reviews are to be completed by the
4 superintendent's designee, and thereafter by a
5 classification committee or other authorized group?

6 A. Correct.

7 Q. Would the -- and that committee is required to
8 review a number of reasons that Ms. Pirozzolo went over
9 with Mr. Bender as well, including the reason for the
10 placement, the threat to institutional security, pending
11 disciplinary issues, classification issues, mental
12 health issues, and the willingness and ability to live
13 with others; correct?

14 A. Correct.

15 Q. And isn't it also true that to ensure proper
16 documenting of this review process that the regulations
17 require the committee must maintain a Special Management
18 Unit report that lists information about each inmate?

19 A. Correct.

20 Q. And have you seen such reports?

21 A. About three to four times every week in 10 years.

22 Q. Have you ever seen such a report about Mr. Ford?

23 A. Mr. Ford is not in that status.

24 Q. And Mr. Ford's status -- Mr. Ford never received
25 a review within 24 hours of his place -- 72

1 hours -- excuse me -- of his placement as a pretrial
2 detainee; correct?

3 A. No.

4 Q. And his class -- and the classification committee
5 was never convened to review the status, correct?

6 A. Yes.

7 Q. And no committee ever reviewed the reasons for
8 Mr. Ford's placement, his mental health issues, his
9 willingness or ability to live with others --

10 THE COURT: You know, this poor stenographer
11 has to write down what you're saying. You need to slow
12 down.

13 MS. CHAUDHARY: My apologies. Sorry.

14 BY MS. CHAUDHARY:

15 Q. No committee ever reviewed the reasons for
16 Mr. Ford's placement, his mental health issues, or his
17 willingness or ability to live with others when he was
18 held as a pretrial detainee; is that correct?

19 A. I am sure that his mental health issues were
20 always monitored; the others, no.

21 Q. And there was no documentation of a review by
22 Mr. Ford in any Special Management Unit report; correct?

23 A. No.

24 Q. An inmate's placement in administrative
25 segregation is intended to be temporary; correct?

1 A. Correct.

2 Q. And you testified -- and you've testified, I
3 believe, that when an inmate is placed in administrative
4 segregation, it's when you're trying to find another
5 place to send him --

6 A. Correct.

7 Q. -- is that correct?

8 Mr. Ford was held in the DDU as a pretrial
9 detainee for over a year; is that correct?

10 A. Correct.

11 Q. That's not a temporary placement?

12 A. No.

13 Q. And he has been held in the DDU as a convicted
14 inmate since April of 2008; is that correct?

15 A. I haven't been in the department for years; so, I
16 couldn't tell you. Until I left in December of 2009, he
17 was in DDU.

18 Q. He was in DDU. And that's not a temporary
19 placement from April 2008 to 2009, when you left;
20 correct?

21 A. It was my understanding he was doing his
22 sanction; so, it wouldn't have been considered
23 temporary.

24 Q. I'd like to talk a little bit about the
25 conditions in administrative segregation.

1 Inmates in administrative segregation are
2 entitled to opportunities for visitors that are largely
3 the same as those in general population; correct?

4 A. I think it's one less a week.

5 Q. But -- but more than those that are available to
6 the inmates in the DDU; correct?

7 A. Yes.

8 Q. And inmates in administrative segregation are
9 entitled to the same opportunities for writing and
10 receiving letters as is available to inmates at the
11 general population; correct?

12 A. Indeed, yeah.

13 THE COURT: I'm sorry. And DDU, they're all
14 the same?

15 THE WITNESS: There's no difference in mail
16 in any place in the facility.

17 BY MS. CHAUDHARY:

18 Q. And inmates in administrative segregation are
19 entitled to the same kinds of meals that are served to
20 those in general population; is that correct?

21 A. It's the entire facility, including DDU.

22 Q. And you testified that the exercise cages
23 in -- for inmates in administrative segregation are
24 larger than the DDU?

25 A. I believe they're longer than the ones in DDU.

1 Q. And isn't it true that inmates would prefer to be
2 housed in the Ten Block than in administration
3 segregation, as compared to the DDU?

4 A. It depends on the inmates. There's some that
5 would prefer it, and others would do things just to go
6 to DDU.

7 Q. If I could direct you to your deposition
8 testimony --

9 A. Yeah.

10 Q. -- in this -- in this matter, page 59.

11 A. Yep.

12 Q. Page 60. Excuse me. Line 15. Do you recall
13 being asked by Mr. Syrett: "So inmates would least like
14 to be in the DDU?"

15 And your answer: "Yes."

16 And then "Least like to be in the Ten Block
17 generally?"

18 And you said: "A normal inmate, yes."

19 So, generally, would you agree that inmates would
20 prefer to be in the Ten Block as compared to DDU?

21 A. Yeah, for visits and phone -- yes. Yes.

22 Q. Mr. St. Amand, Mr. Bender testified that he may,
23 in fact, shorten a DDU sentence upon recommendation of a
24 superintendent of a facility -- or of Cedar Junction --

25 A. Correct.

1 Q. -- since that's the only facility with the DDU.

2 As superintendent, if you had an inmate serving a
3 10-year sentence in the DDU, and after two years, it
4 became apparent to you that the inmate had undergone a
5 genuine change and was no longer the same person who had
6 committed the misconduct that required him to be in the
7 DDU, would you recommend him being released?

8 A. No.

9 (Counsel conferred.)

10 BY MS. CHAUDHARY:

11 Q. Mr. St. Amand, you referred to the corrections
12 officer involved with the 2002 incident --

13 A. Yes.

14 Q. -- regarding Mr. Ford. Do you know his name?

15 A. Dugdale.

16 Q. And does -- Officer Dugdale works in the control
17 unit at MCI-Cedar Junction; correct?

18 A. I don't know where he works now. When I was
19 there, he worked in several areas in the institution.

20 Q. And you had also testified that you would move an
21 inmate if he was involved in an incident with the guard,
22 not adjust an officer's schedule; is that correct?

23 A. Major incidents, yes.

24 Q. Could the inmate be moved to a different facility
25 in that situation?

1 A. That's the only way to do it, yes.

2 Q. To move him to an entirely different facility?

3 A. Correct.

4 Q. And wouldn't that be better than perhaps placing
5 the inmate in an overly restrictive condition of
6 confinement?

7 A. He would have to be placed there until
8 classification could find someplace else to put him.
9 That's -- that is the whole purpose of the
10 administrative segregation.

11 (Counsel conferred.)

12 BY MS. CHAUDHARY:

13 Q. Just to clarify your last answer, you stated that
14 Mr. Ford or an inmate could be placed in ad. seg. in
15 such a situation -- administrative segregation in such a
16 situation --

17 A. Correct.

18 Q. -- but that would be a temporary placement for
19 the purposes of classification only; correct?

20 A. Yes, but they wouldn't actually classify him
21 because he's 52A. They would just have to find another
22 location for him in another facility.

23 Q. But he -- you -- he wouldn't stay in
24 admin -- excuse me -- in administrative segregation; he
25 would be moved somewhere else. That would be the

1 intent; correct?

2 A. Depend -- yes, and at one point he would have to
3 be moved.

4 Q. And -- and sitting here today, you don't know
5 what Mr. Ford's placement would have been after he was
6 moved out of administrative segregation; is that
7 correct?

8 A. No, I don't.

9 Q. Because no analysis was ever done to consider
10 that in 2007 and 2008, to your knowledge; is that
11 correct?

12 A. Correct.

13 MS. CHAUDHARY: I have no further questions.

14 THE COURT: Redirect?

15 MS. DANIELE: Just a couple, your Honor.

16 REDIRECT EXAMINATION

17 BY MS. DANIELE:

18 Q. On that same train of thought, Superintendent St.
19 Amand, once you placed Mr. Ford in Ten Block, what would
20 you have done?

21 A. I would have notified the Director of
22 Classification, the department's Director of
23 Classification. I would have him review all of his
24 inmate enemies to see if any of them were still in the
25 facility and what institutions they were at, and I would

1 have to -- spoke to the officer to see if there was
2 still an issue between him and Mr. Ford.

3 Q. Superintendent St. Amand, are there TVs allowed
4 in Ten Block?

5 A. No.

6 Q. Is there air conditioning in Ten Block?

7 A. No.

8 Q. Superintendent St. Amand, counsel showed you a
9 photograph of an east wing cell.

10 A. Uh-huh. Yes.

11 Q. And I believe that it was your testimony that
12 inmates in the east wing have out-of-cell time on the
13 flats; is that correct?

14 A. Yes. Well, they didn't ask me that, but, yes.

15 Q. I apologize.

16 Could an inmate in -- locked in an east wing
17 cell, like the one that you're looking at, grab another
18 inmate from the flats and stab him?

19 A. Yes.

20 MS. DANIELE: I have no further questions,
21 your Honor.

22 THE COURT: Are you done with this witness?

23 MS. CHAUDHARY: I have no questions.

24 THE COURT: You may step down. Thank you.

25 THE WITNESS: Thank you.

1 THE COURT: Can someone get us those
2 exhibits.

3 I think it makes sense -- do you want to
4 break or you want to start the next witness?

5 MS. DANIELE: We can do a brief break, if
6 you want. I don't know --

7 THE COURT: I don't want to do a brief
8 break. I either want to go to one o'clock, and we'll
9 break for lunch then, or we can break now and come back.

10 MS. DANIELE: We can break now, that's fine,
11 if this is a good time for everybody.

12 We have two more witnesses for this
13 afternoon.

14 THE COURT: All right. So an hour break for
15 lunch.

16 (Recess from 12:31 p.m. until 1:37 p.m.)

17 THE CLERK: All rise.

18 You may be seated.

19 THE COURT: Okay. Call your next witness,
20 please.

21 MR. ANAHORY: Thank you, your Honor.

22 Your Honor, the department -- the defendants
23 call Dale Bissonette.

24 THE CLERK: Please raise your right hand.

25 DALE BISSONETTE, SWORN

1 THE CLERK: Please be seated. Please state
2 your full name, spelling your last name for the record.

3 THE WITNESS: Dale Bissonette, B, as in boy,
4 I-S-S, as in Sam, O-N, as in Nancy, E-T-T, as in Tom, E.

5 DIRECT EXAMINATION

6 BY MR. ANAHORY:

7 Q. Ms. Bissonette, could you please state where
8 you're employed.

9 A. Massachusetts Department of Correction at
10 MCI-Cedar Junction.

11 Q. And how long have you been employed with the
12 Department of Correction?

13 A. Over 25 years.

14 Q. And can you list the -- your current position
15 with the Department of Correction?

16 A. Department Disciplinary Unit, administrator.

17 Q. And could you also give the Court a brief
18 background of other positions that you've held within
19 the Department of Correction?

20 A. Prior to being the DDU administrator, I was the
21 Executive Assistant for the Associate Commissioner of
22 Administration. I was a unit manager at MCI-Cedar
23 Junction for seven years. Prior to that I was a
24 correction officer for approximately five and a half
25 years; and prior to that, I was a secretary to the

1 Deputy Superintendent of Programs, and a clerk in the
2 records office.

3 Q. And how long have you held your current position?

4 A. Four -- just over four years.

5 Q. And do you know the date that you began that
6 position?

7 A. It was April 2007.

8 Q. And could you describe for the Court your duties
9 and responsibilities as the administrator of the DDU?

10 A. I oversee the day-to-day operations of the
11 Department Disciplinary Unit, ensuring that the staff
12 and the inmates are following policy and procedure.

13 Q. And can you give the Court a background of what
14 the DDU is.

15 A. The Department Disciplinary Unit is a -- kind of
16 like a small institution of its own, and inmates come
17 into the DDU as a result of a serious disciplinary
18 infraction committed in one of the other Department of
19 Correction facilities. There is a process where the
20 inmate receives a D report. The superintendent
21 determines whether or not it was -- it is a DDU
22 referable offense. It is reviewed by the central and
23 main Disciplinary Unit Director. It -- prior to three
24 months ago, it was also reviewed by the mental health
25 director to determine if it should go forward.

1 Once it's determined that it's DDU referable,
2 again it goes forward. It's scheduled for a hearing by
3 the special hearings officer. The hearing is held. The
4 recommendation for a sanction, if one is warranted, is
5 made. The results are served to the inmate. He has 15
6 days to appeal the results.

7 After the 15-day appeal process is up, the final
8 stage is at the deputy commissioner's level, and he
9 has -- it's usually around 30 days to make a decision on
10 whether he's -- upholds the sanction, reduces the
11 sanction, or modifies it in any such way after that.

12 Once he makes a decision, then a letter is issued
13 to the inmate, and then the inmate is transferred into
14 the DDU.

15 Q. Can you provide for the Court information where
16 the DDU is located.

17 A. It's located on the grounds of MCI-Cedar Junction
18 in South Walpole, Mass.

19 Q. And is it located within the walls of Cedar
20 Junction?

21 A. Yes, it is.

22 Q. And is it located within the walls of the general
23 population -- is it in the same location as the general
24 population units in Cedar Junction?

25 A. No, it is not. It's in a separate building of

1 its own.

2 THE COURT: How many -- do you only take
3 inmates who have committed infractions at Cedar
4 Junction, or can people be sent from other institutions?

5 THE WITNESS: From any of the other male
6 facilities within Massachusetts Department of
7 Correction.

8 BY MR. ANAHORY:

9 Q. Could you describe the physical layout of the DDU
10 for the Court, please. By that, I mean, let's start
11 with the -- how many tiers are there in the DDU?

12 A. There are 12 tiers in the DDU. There's A wing, B
13 wing and C wing. Each of the wings have four tiers.
14 Each tier comprises either 10 or 11 cells, and then
15 there's a small observation area called D wing, and that
16 has four cells to it. So there's a total of 124 regular
17 cells and four observation cells.

18 Q. And is there a separate area where inmates are
19 visited or receive visits?

20 A. Yes, there's three noncontact visiting rooms for
21 social visits, and then there's two separate attorney
22 visiting rooms where the inmate can have actual contact
23 with their attorney.

24 Q. And can you give to the Court a general
25 description of a DDU cell.

1 A. The cell, I believe, is approximately 12 feet by
2 12 feet, 8 inches by 6 -- 6 feet. I don't know the
3 exact dimensions. The bed is across the back wall, and
4 it's made of concrete. Over the bed is a side light
5 window. Adjacent to the bed is a concrete desk, a
6 concrete stool. Closer to the door is a concrete shelf
7 for hygiene items, and then near that is a combination.
8 It's a steel, metal sink/toilet combination. The door
9 is a solid door, and it has a small side light window,
10 and within the door is also a food slot at the top and a
11 leg iron slot at the bottom.

12 Q. And you said the bed was concrete. Do inmates
13 receive a mattress?

14 A. Yes, they do.

15 Q. Do you know the dimensions of a DDU cell?

16 A. Off the top of my head, no, I said. I'm not
17 positive.

18 Q. Once an inmate is incarcerated in -- in the DDU,
19 for instance, if an inmate comes into the DDU, what's
20 the process that takes place?

21 A. The inmate has to -- he's in full restraints. He
22 gets transferred into the DDU with -- by that I mean
23 he's transferred with leg restraints and then wrist
24 restraints behind the back. Then the process is a
25 two-man hands-on escort anywhere in the DDU that this

1 inmate goes. He is brought into the DDU, brought to the
2 strip cell where he's strip searched. We issue him DDU
3 clothing, a T-shirt, underwear, socks, a scrub top,
4 scrub bottoms. Depending on the footwear that he has,
5 he may keep his own sneakers or we issue him a pair of
6 state sneakers. He is brought back into -- put back
7 into restraints, full restraints, and he's escorted to
8 his cell.

9 Q. And is he provided with any documents concerning
10 the DDU?

11 A. He would have been provided with that prior to
12 his actual arrival in the DDU.

13 Q. Can you describe for the Court what those
14 documents would be.

15 A. He would have received a letter from the Deputy
16 Commissioner authorizing his placement in the DDU. He
17 would have had a DDU hearing, which he could have
18 requested copies of the hearing himself.

19 He would have been served with the results of the
20 recommendation from the Special Hearings Officer; and
21 within 24 hours of being placed in the DDU, unless it's
22 a weekend, the Correction Program Officer would issue
23 him an Inmate Orientation Manual to read and review.
24 He's allowed to keep that, and then the Correction
25 Program Officer will ask him if he has any questions or

1 anything that he needs to clarify.

2 Q. Can you briefly describe for the Court what that
3 manual is. What's in that manual?

4 A. It explains the process of the DDU; the -- the
5 restraint process; that we utilize restraints and the
6 two-man hands-on escort; it describes recreation, how
7 often they get recreation; how to access medical; how to
8 access mental health; the 30-day review process; the DDU
9 privileges; how to utilize -- request the law library
10 usage.

11 THE COURT: What's the 30-day review
12 process?

13 THE WITNESS: Every inmate who comes into
14 the DDU has to be reviewed at least once every 30 days
15 to evaluate their behavior to determine what privilege
16 level they will be at. The privilege level changes from
17 30 days to 60 days to 90 days and 120 days. There's
18 different levels of privileges.

19 BY MR. ANAHORY:

20 Q. So directing your attention to the privilege
21 system, an inmate who's new to the DDU comes in at what
22 privileges?

23 A. Has no privileges. He will be issued one
24 telephone call upon his arrival to let a family member,
25 friend, whomever he choses, let them know that they

1 won't hear from him for at least 30 days.

2 Q. And what's the purpose behind this privilege
3 system?

4 A. To get the inmate to improve his behavior.

5 Q. And this is a progressive system?

6 A. Correct.

7 Q. And at what point does it cap off?

8 A. After 120-day privileges, then you stay at
9 120-day privileges for the duration, as long as you
10 don't pick up any serious disciplinary reports that
11 warrant reduction in your privileges.

12 Q. And you testified that these reviews happened
13 every 30 days?

14 A. Correct.

15 Q. And were these the same rules back in 2007?

16 A. Yes.

17 Q. Could you tell the Court how often and for what
18 reason -- what reasons DDU inmates would leave their
19 cells?

20 A. They can leave their cells -- they have an
21 opportunity to recreate five times a week for one hour
22 at a -- recreation is for one hour at a time. They earn
23 visits. They can earn up to a maximum of four visits,
24 and those are one hour in duration. They leave their
25 cells to go up to triage, whether it be for being on a

1 doctor's line or possibly the dentist line. We have
2 some inmates that require daily insulin or daily
3 dressing changes. They would be required to leave their
4 cells for that. They have to go to Court. They have to
5 go to an off-site hospital. We also have -- they may
6 just be seeing a different medical provider, and it may
7 have to be done in the HSU; so, we would have to take
8 them out of their cells for that as well.

9 Q. And are there certain procedures that must be
10 followed when an inmate leaves his cell?

11 A. Absolutely.

12 Q. Could you describe those procedures.

13 A. Prior to leaving the cell, every time the inmate
14 leaves the cell, he has to be fully stripped searched.
15 He passes his clothing out to the correction officer,
16 who will be escorting him. They search the clothing.
17 They search the shoes. He may put the clothing back on.
18 He is processed into restraints, wrist restraints behind
19 the back, leg irons.

20 The correction officer will have the door open.
21 The inmate is pat searched on the tier, and then there
22 is a two-man hands-on escort, wherever they are in the
23 DDU.

24 Q. And why are those procedures utilized?

25 A. The inmates in the DDU are the most disruptive,

1 usually volatile inmates in the Massachusetts Department
2 of Correction, and that's how we process them through to
3 ensure that we can maintain safety.

4 Q. Could you tell the Court how inmates in the DDU
5 receive their meals.

6 A. They are delivered by correction officer staff.
7 They eat in their cells, and they're provided in a
8 Temp-Tech tray. The inmate has approximately 20 to
9 25 minutes to eat, and then the staff go back and
10 collect all the trays and the utensils.

11 Q. And can you tell the Court why the department
12 utilizes those procedures.

13 A. Safety and security. We wouldn't -- the inmates
14 in the DDU are in single cells, and we don't allow them
15 to be in places other than one person at a time.
16 Everything is done singularly.

17 Q. Could you also describe for the Court the types
18 of programming or, if any, that are available to DDU
19 inmates?

20 A. There are several types of programs available.
21 We have a DDU high risk offender program, and that is
22 limited to participation of four inmates at one
23 particular time. That program is -- it's facilitated by
24 the Spectrum, who is contracted out to the department
25 and then tries to target cognitive behavioral skills of

1 inmates within the DDU to help them process thinking, to
2 hopefully not bring them back to the type of a situation
3 where they have to be in the DDU.

4 That is roughly a 24-session program. The first
5 eight sessions are individual sessions, one-on-one with
6 the facilitator; and the second portion of that is
7 16 group sessions where the inmates are placed in
8 therapeutic modules individually, so that they can still
9 communicate with themselves and the facilitator. And if
10 the inmates complete that program, they will be granted
11 up to 30 days off their DDU sanction of their release
12 date.

13 And then inmates also have via closed circuit
14 television, we have educational programming, which
15 consists of adult basic education, the GED program,
16 pre-GED program, commercial driver's license program,
17 and then there's also religious programming available on
18 the television as well.

19 If the inmate hasn't earned the privilege of
20 using a television, then they're allowed to do the
21 workbook portion of it until they -- until such time
22 that they actually earn the use of the television to
23 supplement the workbook portion of the programming.

24 Q. Now, are there any other services available to
25 closed circuit TV?

1 A. Other than the religious services, not that
2 I'm -- well, regular TV programming, and they show
3 movies on weekends.

4 Q. Okay. Are you familiar with Mr. Ford, the
5 plaintiff in this case?

6 A. I am.

7 Q. How do you know him?

8 A. Through working for the Department of
9 Corrections. He has spent a lot of time at MCI-Cedar
10 Junction, which is where the majority of my experience
11 has been.

12 Q. So have you known him prior to working in the
13 DDU?

14 A. Yes.

15 Q. And you talked about programming. Did Mr. Ford
16 participate in any programs in the DDU?

17 A. Yes. He completed the high risk offender
18 program, I believe, at the end of June.

19 Q. Could you tell the Court the circumstances
20 regarding his participation in this program.

21 A. I'm sorry. I'm not sure.

22 Q. Did he ask to be placed in this program?

23 A. Yes.

24 Q. And he was granted placement in it?

25 A. Correct. There's an interview process. The

1 process consists of the inmate applies through the
2 Spectrum coordinator, and we interview him, the Spectrum
3 coordinator, myself; if the DDU Captain is available, he
4 will attend; the DDU Correction Program Officer; and on
5 occasion, we have a mental health clinician that will
6 also be part of the interview process, just to try to
7 get a sense of whether or not the inmate is truly
8 committed to the program and is going to participate in
9 it.

10 Q. And do inmates receive mental health screening
11 when they come into Cedar Junction from outside -- from
12 an initial incarceration?

13 A. Yes.

14 Q. And are you aware with regard to Mr. Ford, did he
15 receive that in June of 2007?

16 A. Yes, he did.

17 Q. You're sure?

18 A. Positive.

19 Q. Could you describe to the Court whether or not
20 Mr. Ford has any special security status assigned to
21 him?

22 A. Yes, he does. He's a level A status according to
23 the Department of Corrections guidelines; and within the
24 Department Disciplinary Unit, he is on extra restraints.

25 Q. First, with respect to level A status, what does

1 that mean?

2 A. They have certain guidelines for the Department
3 of Correction Policies that this -- I'm not sure exactly
4 what the guidelines are. It's all written in a policy,
5 but someone in the Internal Affairs Unit at the central
6 office, they're the ones who determine which inmates in
7 the Department of Correction are on level A status. And
8 when they are, they have to be able -- their cell has to
9 be moved at least once every 30 days, and when they're
10 on outside transportation, extra officers are assigned
11 to the DDU.

12 Q. So was Mr. Ford's cell moved every 30 days?

13 A. Yes.

14 Q. And does he -- does his cell -- is this movement
15 continued even today?

16 A. As of today, I'm not positive. There's
17 another -- there was another guideline in the policy
18 that allowed a superintendent to waive the 30-day
19 movement of the inmate within the facility, but keep him
20 on level A status when he transferred, when he was
21 on -- outside of our facility.

22 Q. So in the DDU, do you move his cell every
23 30 days?

24 A. I don't think so.

25 Q. And can you tell the Court a little bit about

1 that other special -- the restraint status that he has
2 within the DDU?

3 A. Extra restraint status is an internal procedure
4 that we utilize. When some inmates are more disruptive
5 or volatile, we'll place the inmate on extra restraint
6 status, which means that when he leaves his cell, he has
7 a three-man escort; two-man hands-on, and then the third
8 person is a supervisor that monitors the movement to
9 wherever the inmate is going; and when the inmate
10 recreates in the yard, he will remain in full
11 restraints.

12 Q. Could you let the Court know -- because you
13 mentioned earlier -- you testified earlier about the
14 privileges and how that worked.

15 Do you know what privileges Mr. Ford received in
16 January of 2007?

17 A. I believe he was at the 90-day privileges in
18 January of 2007, and then February, he -- he was
19 advanced to the maximum privileges of four phone calls,
20 four visits, a TV, and a radio.

21 Q. So, despite his status change, his privileges
22 didn't change?

23 A. I'm sorry. I don't understand the question.

24 Q. Based on what you've just testified to, is it
25 safe to say that even though he -- he changed his status

1 from convicted to pretrial, his privileges didn't change
2 in the DDU?

3 A. No, they did not.

4 Q. And are you familiar with the level of privileges
5 he received when he came back into the institution in
6 June of 2007?

7 A. Yes.

8 Q. And what were those?

9 A. He started back at the maximum warranted
10 privileges.

11 Q. And why didn't he start over?

12 A. It just seemed logical that when he left the
13 department from the DDU, he was at maximum privileges,
14 so when he returned, nothing had changed; so, we put him
15 back at maximum privileges.

16 Q. And did Mr. Ford ever complain to you that
17 the -- that his restraints were digging into his skin?

18 A. No.

19 Q. And if Mr. Ford had made this complaint, would
20 you be aware of it?

21 A. Yes.

22 Q. How so?

23 A. He could have voiced it to me when I make my
24 rounds on the tier. He could have written it to me in a
25 letter, and I would have advised him to seek medical

1 attention.

2 MR. ANAHORY: Thank you.

3 No further questions, your Honor.

4 THE COURT: When you say that recreation is
5 in full restraints, what does that mean?

6 THE WITNESS: He recreates with his hands in
7 wrist restraints behind the back and leg irons on his
8 ankles.

9 THE COURT: What --

10 THE WITNESS: And that's only for inmates
11 who are on this extra restraint status.

12 THE COURT: And is that what his status is
13 now?

14 THE WITNESS: Yes.

15 MR. ANAHORY: Can I just follow-up, your
16 Honor, with that?

17 THE COURT: Yes.

18 BY MR. ANAHORY:

19 Q. Why is he in on extra restraint status now?

20 A. Due to the threats that he made against staff.

21 MR. ANAHORY: I see. Thank you.

22 CROSS-EXAMINATION

23 BY MS. PIROZZOLO:

24 Q. Ms. Bissonette, when did Mr. Ford get put on
25 extra restraint status?

1 A. I don't have the documentation in front of me. I
2 didn't look it up yesterday.

3 Q. It was the winter of 2009; correct?

4 A. I just said I don't have the documentation in
5 front of me.

6 Q. It was right as DOC officials were being deposed
7 in this case that he was put on extra restraint status;
8 correct?

9 MR. ANAHORY: Objection, your Honor.

10 THE COURT: Overruled.

11 THE WITNESS: I don't know. If I had the
12 paperwork in front of me, I'd be able to tell you that.
13 I don't have it with me, for a specific date.

14 BY MS. PIROZZOLO:

15 Q. But you do have paperwork that would show the
16 specific date on which Mr. Ford got put on extra
17 restraint status; correct?

18 A. Yes, I do.

19 Q. Now, you said it was due to some incident.

20 When did that incident occur?

21 A. It was due to some threats that he had made
22 against staff. It wasn't -- I believe it was more than
23 one particular instance.

24 Q. But you don't remember when that was?

25 A. No, I don't have the paperwork in front of me.

1 Q. Now, I want to ask about the 30-day review --

2 A. Okay.

3 Q. -- in the DDU.

4 A committee doesn't conduct that review;
5 correct?

6 A. Correct.

7 Q. Okay. And that review is for determination of
8 phone and visitation privileges; correct?

9 A. Correct.

10 Q. And there's no review of the reason for placement
11 in the DDU; correct?

12 A. No, there's not.

13 Q. There's no review of mental health issues as part
14 of the 30-day review; correct?

15 A. Correct.

16 Q. And you don't review the inmate's willingness to
17 live with others or exist in a general population;
18 correct?

19 A. Correct.

20 Q. That's not the point of that review; correct?

21 A. Correct.

22 MS. PIROZZOLO: Your Honor, may I approach?

23 THE COURT: Yes.

24 BY MS. PIROZZOLO:

25 Q. Ms. Bissonette, I've just handed you a document.

1 Is that a 30-day DDU review slip?

2 A. Yes, it is.

3 Q. And when you're talking about review, you're
4 talking about the information on this type of slip;
5 correct?

6 A. Correct.

7 MS. PIROZZOLO: Your Honor, I'd move to
8 admit the 30-day DDU review slip as the next exhibit.

9 THE COURT: Exhibit 25. Any objection?

10 MR. ANAHORY: No, your Honor.

11 THE COURT: So marked.

12 (Exhibit No. 25 was admitted into evidence.)

13 MS. PIROZZOLO: Did the email get in?

14 THE CLERK: Yeah.

15 MS. PIROZZOLO: Great.

16 So is this Exhibit 26?

17 THE COURT: Twenty-five.

18 MS. PIROZZOLO: What's the email?

19 THE COURT: Twenty-five. I have
20 twenty -- is that what you have, too?

21 MS. PIROZZOLO: We put in the email during
22 the break.

23 THE COURT: The email that we had left out
24 as Exhibit 21 --

25 MS. PIROZZOLO: Okay.

1 THE COURT: -- and then we had the photos of
2 the field, the east wing, and the west wing, so now
3 we're up to 25.

4 MS. DANIELE: At least that's what I have.

5 MS. PIROZZOLO: Okay. Do you want to speak
6 up?

7 MR. SYRETT: Your Honor, my --

8 THE COURT: Do you have something else?

9 MR. SYRETT: -- my records may well be
10 wrong. I have the letter from Ken Nelson as Exhibit 21,
11 and then I think that we hadn't handed up the email, so
12 I'm not sure it got marked along the way. So I
13 don't -- I didn't have it down as receiving a number,
14 but I may be incorrect.

15 THE COURT: Well -- so in other words, we
16 have two Exhibit 21s?

17 THE CLERK: Yeah. I had that, too, as a
18 letter from Nelson to Ford, dated 8/27/07.

19 THE COURT: Okay. We shouldn't marked that
20 one 21.

21 THE CLERK: All right. I can --

22 THE COURT: All right. The email will then
23 be marked as Exhibit 25, and this would be Exhibit 26.
24 So Exhibit 26 will be the DDU review slip.

25 Thank you.

1 (Exhibit Nos. 25 and 26 were admitted into
2 evidence.)

3 BY MS. PIROZZOLO:

4 Q. Now, when an inmate in DDU gets a 30-day review
5 slip, he doesn't have to come out of his cell to get
6 that slip; correct?

7 A. No, he doesn't.

8 Q. Okay. The slip is just put in through a slot in
9 the door; correct?

10 A. Well, that all depends. If he's in his cell at
11 the time that the caseworker is bringing around those
12 reviews, he'll hand it to him; and if not, he will be
13 left in his cell. If he's out at the yard or he's on a
14 court trip or something, we'll leave it in the cell for
15 the inmate.

16 Q. But there's not necessarily any interaction over
17 the communication of the privilege information?

18 A. Not necessarily unless the inmate wants to ask
19 the caseworker a question about the review itself.

20 Q. Now, you said that Mr. Ford got mental health
21 screening; do you remember that?

22 A. Yes, I do.

23 Q. How do you know Mr. Ford got mental health
24 screening?

25 A. I saw the mental health screening this morning.

1 Q. So that was a record that you saw out of court?

2 A. Correct.

3 Q. So you don't have any personal knowledge of
4 whether Mr. Ford got health screening; correct?

5 A. Well, I saw the paperwork showing that he did get
6 it; so that is personal knowledge that he got that.

7 Q. Well, it's personal knowledge of a paper that
8 said that?

9 A. Correct.

10 MS. PIROZZOLO: Your Honor, I'd move to
11 strike that testimony.

12 THE COURT: As hearsay?

13 MS. PIROZZOLO: Yes, your Honor.

14 MR. ANAHORY: Your Honor, she saw it. It's
15 certainly a business record.

16 THE COURT: You saw a business record, but
17 we don't have the business record. It is stricken.

18 BY MS. PIROZZOLO:

19 Q. Now, you don't know what effect continued
20 confinement in the DDU has on mental health inmates;
21 correct?

22 A. I have not studied that, no.

23 Q. And you're not familiar with statistics regarding
24 the incidence of mental health problems in DDU; correct?

25 A. Correct.

1 Q. You haven't ever been given training on the
2 treatment of pretrial detainees; correct?

3 A. Correct.

4 Q. And you were never told you couldn't punish
5 pretrial detainees; correct?

6 A. I don't punish pretrial detainees.

7 Q. But you were never told you could not punish
8 pretrial detainees?

9 A. I don't punish any inmates.

10 Q. But my question is you weren't told you could not
11 do that?

12 A. No.

13 MS. PIROZZOLO: I have no further questions.

14 MR. ANAHORY: Your Honor, at this point, I
15 would like to enter that business record in as an
16 exhibit.

17 I'll show the form to counsel. I'm sure
18 they'll have an objection. But I'd like to at least
19 mark it for identification.

20 THE COURT: Was this introduced before?

21 MR. ANAHORY: No, your Honor. This is --

22 MS. PIROZZOLO: No, your Honor.

23 THE COURT: It has not been produced in this
24 case?

25 MR. ANAHORY: It's -- it's rebuttal. It's

1 based on --

2 THE COURT: Has it been produced as a
3 document in this case?

4 MR. ANAHORY: No, your Honor. It was just
5 discovered yesterday, last night.

6 MS. DANIELE: It would have been produced in
7 discovery though in the medical records.

8 MR. ANAHORY: It is a medical record, so to
9 the extent that --

10 MS. PIROZZOLO: We have not seen this
11 before.

12 THE COURT: Would this have been covered by
13 a document request before that's been made in this case?

14 MS. SCHULMAN: Yes.

15 MS. PIROZZOLO: Yes. Yes, your Honor.

16 THE COURT: And it just wasn't found before?

17 MS. DANIELE: No, it would be -- I -- we
18 didn't go back and look in -- we have stacks and stacks
19 of medical records that we turned over to them. I am
20 presuming it was turned over because I turned over all
21 the medical records for that time period.

22 So I'm just presuming that it was turned
23 over. Because we didn't know that until yesterday that
24 Mr. Ford was going to testify that he never got mental
25 health screening in June. I then at the end of the day

1 called Walpole and said can you get this and fax it over
2 to us immediately because there's no way last night I
3 could go through the boxes and boxes of documents, and
4 they're not organized where they have them down in the
5 medical records.

6 So it's my understanding that I would have
7 turned it over. There's no reason that I wouldn't have.
8 I just can't give you a Bates number that it was turned
9 over under, because I turned over all of the --

10 MS. PIROZZOLO: So I just have to
11 clarify -- we -- okay. We got documents that -- we
12 don't know if this was in those. This copy is not Bates
13 stamped; so, there's no way for me to tell that we've
14 gotten it, and it certainly wasn't identified to us
15 before right now.

16 THE COURT: Why don't we mark it as Exhibit
17 B for now, and then if there's no -- you can look over
18 your records and see if you're challenging it. All
19 right?

20 MS. PIROZZOLO: Thank you, your Honor.

21 THE COURT: I can tell you if it has not
22 been produced, it's not coming in. If it has been
23 produced, you can set the foundation for it being a
24 business record, unless that's disputed -- not disputed.

25 (Document was marked Exhibit B for

1 identification.)

2 REDIRECT EXAMINATION

3 BY MR. ANAHORY:

4 Q. Ms. Bissonette, do you recognize this exhibit?

5 A. Yes, I do.

6 Q. And what is it?

7 A. It's a medical and mental health screening of
8 Mr. Ford.

9 Q. And what is the date on this exhibit?

10 A. June 26th of 2007.

11 Q. And do you know if the -- the information on this
12 exhibit, would it have been entered in by a person with
13 knowledge of the facts that are contained in this
14 exhibit?

15 A. Yes.

16 MS. PIROZZOLO: Objection, your Honor.

17 THE COURT: Is this a standard form that's
18 used when persons are going into the DDU?

19 THE WITNESS: Yes, it is. It's -- it's a
20 standard form utilized any time any inmate amongst any
21 facility in the Department of Correction that's going to
22 any segregation unit. It's a standard operating
23 procedure to have them screened by both medical and
24 mental health.

25 THE COURT: And this is the form that's

1 used?

2 THE WITNESS: Correct.

3 THE COURT: And who fills it out?

4 THE WITNESS: A medical RN or an LPN or some
5 form of medical person would fill out the medical
6 portion, and whoever are contracted out for mental
7 health services, one of those clinicians would be
8 responsible for filling out the mental health portion of
9 the form, and both have to be done prior to the inmate's
10 movement into the DDU.

11 THE COURT: Do you know in Mr. Ford's case
12 whether he went anywhere other than the DDU in June of
13 '07?

14 THE WITNESS: He would have gone to the
15 health services unit prior to coming into the DDU, and
16 that's where this form would have been conducted.

17 THE COURT: Okay. You can continue.

18 BY MR. ANAHORY:

19 Q. And this form --

20 MR. ANAHORY: At this time, your Honor, I'd
21 like to enter it into evidence.

22 THE COURT: Do you have an objection as to
23 the foundation of this as a business record?

24 MS. PIROZZOLO: I don't know enough about it
25 because it's entitled UMass Correctional Health

1 Screening Form. So we don't know anything about this
2 form.

3 MS. DANIELE: Your Honor, I can tell you, I
4 know for a fact that I turned over a lot of these forms
5 to them. I know -- I can visual -- I looked through
6 them recently, that's why I know. This particular one,
7 I don't look at -- didn't look at the dates, but there
8 were a number of these forms turned over.

9 THE COURT: All right. I'm going to keep it
10 as Exhibit B for now. I will allow cross-examination on
11 it if you want.

12 BY MR. ANAHORY:

13 Q. So what does this form mean?

14 A. That medically and mental health-wise, those
15 personnel feel that the particular inmate, and in this
16 case, Mr. Ford, is okay to enter the DDU.

17 MR. ANAHORY: Thank you.

18 THE WITNESS: You're welcome.

19 RECROSS-EXAMINATION

20 BY MS. PIROZZOLO:

21 Q. Ms. Bissonette, you weren't present at the mental
22 or the physical health screening; correct?

23 A. Correct.

24 Q. Do you know who performed that screening?

25 A. I can't read the screening for the medical one;

1 however, the mental health screening is done by Theresa
2 Brasier.

3 Q. Do you know how long the mental health screening
4 lasted?

5 A. No, I don't.

6 Q. Do you know anything about what was communicated
7 to Ms. Brasier during that?

8 A. No, I do not, only what's written here and what
9 she wrote.

10 MS. PIROZZOLO: I have no further questions.

11 THE COURT: Well, let's bring this up
12 tomorrow.

13 Thank you. You may step down.

14 (The Court conferred with the Clerk.)

15 THE COURT: Please call your next witness.

16 MS. DANIELE: The defendants call Carol
17 Mici.

18 THE CLERK: Please raise your right hand.

19 CAROL MICI, SWORN

20 THE CLERK: Please be seated. Please state
21 your full name, spelling your last name for the record.

22 THE WITNESS: Carol Ann Mici. Last name is
23 M-I-C-I.

24 DIRECT EXAMINATION

25 BY MS. DANIELE:

1 Q. Good afternoon. Could you tell us your present
2 position with the Department of Correction.

3 A. Assistant Deputy Commissioner of Classification.

4 Q. When did you become Assistant Deputy Commissioner
5 of Classification?

6 A. April of 2007, I believe.

7 Q. Prior to becoming Assistant Deputy Commissioner
8 of Classification, what was your position?

9 A. Director of Classification for the whole
10 Department of Correction.

11 Q. And when were you Director of Classification?

12 A. May of 2005 through April of 2008; so, I've been
13 Assistant Deputy Commissioner since 2008, I believe.
14 Yeah. I'm missing a year there, I think. Sorry.

15 Q. That's okay. Regardless, in January of 2007, you
16 were in charge of classification for the DDU; is that
17 correct?

18 A. Correct.

19 Q. Okay. Prior to becoming Director of
20 Classification, could you just briefly tell us what
21 positions you held with the department.

22 A. I started as a Correction Counselor. I was a
23 Correction Counselor 1, 2 and 3, which is now called a
24 Correctional Program Officer. I was a Supervisor of
25 Classification, a Director of Treatment, a Deputy

1 Superintendent, a Superintendent, and then the Director
2 of Classification for the whole department.

3 Q. As Director of Classification, what were your
4 duties?

5 A. As the director, I was responsible for the
6 deputation and classification of all offenders
7 throughout the department.

8 Q. How did that position change when you became
9 Assistant Deputy Commissioner of Classification?

10 A. I absorbed more divisions when I took -- when I
11 became the Assistant Deputy Commissioner; so, I oversee
12 the sex offender unit; data collection; county, federal,
13 and state; central records; and then the two divisions I
14 already talked of.

15 Q. When -- as Assistant Deputy Commissioner of
16 Classification, who do you report to?

17 A. Deputy Commissioner Veronica Madden.

18 Q. When you were Director of Classification, who did
19 you report to?

20 A. Deputy Commissioner Veronica Madden.

21 Q. What is classification within the Department of
22 Correction?

23 THE COURT: Can you please keep your voice
24 up.

25 MS. DANIELE: Sorry.

1 THE WITNESS: It is an assessment of an
2 inmate's program needs and security level. In real
3 basic terms, it's an assessment.

4 BY MS. DANIELE:

5 Q. What does that assessment do?

6 A. It -- what classification is supposed to do is
7 it's supposed to place an inmate in the most appropriate
8 security level, conducive with public safety, based on
9 research-based factors. So it is supposed to guide you
10 as to what security level you need to place an inmate
11 in.

12 Q. What are your options for security levels?

13 A. There is maximum security, medium security,
14 minimum security, prerelease security, and some halfway
15 house that's residential beds as well.

16 Q. How, in general -- general terms, how is the
17 decision of what institution level to place an inmate
18 made?

19 A. Classification works based on a numeric system.
20 It's a series of variables that will, based on the
21 variables, it -- you come up with a score, and the score
22 drives the custody level decision, certainly taking
23 into -- other things into consideration, but it's really
24 a guide as to where -- what level of security to place
25 the inmate in.

1 Q. What are some of the factors that you look at?

2 A. The severity of the current crime, an escape
3 history, criminal history, past incarcerations, number
4 of D reports, severity of D reports, age, employment,
5 education.

6 Q. Are DDU inmates classified?

7 A. No, they are not.

8 Q. Why not?

9 A. They are not subject to classification based on
10 that it's a disciplinary sanction, and the
11 classification process basically stops at that point,
12 and the DDU has their own review process.

13 Q. Are pretrial detainees, or as we call them
14 colloquially in the department, 52A classified?

15 A. No, they're not.

16 Q. Why not?

17 A. 52As are not currently convicted, and they
18 basically come to the Department of Correction either
19 via referral through a DA or a standing court orders
20 through a couple of our counties in Massachusetts, and
21 it is a placement based on two of the counties. It's
22 based on overcrowding, and other counties who petition
23 for it. It's based on a variety of factors.

24 So they come in to be held just awaiting trial,
25 and there's no -- there's no variables we can classify

1 them on because they haven't been sentenced yet at this
2 point.

3 Q. What -- what is a 52A?

4 A. A 52A is a -- an offender who can come into the
5 Department of Correction, because they have served prior
6 felony time in the State of Massachusetts; so, they can
7 be subject to Massachusetts' facilities as opposed to
8 being housed at the county facility.

9 Q. When can we take a pretrial detainee?

10 A. We can take them -- through Middlesex and
11 Suffolk, it's automatic because there's standing court
12 orders. Any other county needs to petition. The DA
13 needs to petition and actually request it to the
14 Department of Correction -- through the Commissioner of
15 Correction.

16 Q. How do those -- did the 52A requests from the
17 county come to you?

18 A. They do come to me as the commissioner designee.

19 Q. And how does that happen?

20 A. Generally through facsimile. Just they're faxed
21 to the office. Sometimes we'll get a call ahead of
22 time; sometimes we will not.

23 Q. And what do you do when you get that kind of
24 request?

25 A. When we get a petition, we try to get as much

1 information from the county that we can about the
2 offender they're trying to send us.

3 We may have records on him as well, based on
4 their past time with us; and we certainly call -- reach
5 out to somebody in the county to find out the reasons
6 behind why they're sending them, why they're asking us.

7 Q. For what reasons does -- typically does a county
8 request that we take a 52A?

9 A. It's usually a problematic inmate. They don't
10 feel -- the counties in Massachusetts are very
11 different. Some of them can handle assaultive or
12 difficult inmates or protective custody inmates; others
13 cannot. So they will petition the department to take
14 the inmate.

15 Q. Are there other reasons also?

16 A. We've had people -- we've had counties petition
17 for medical reasons because they can't handle them
18 medically.

19 Q. When you're -- so you're the one that accepts the
20 52As; is that correct?

21 A. Myself, and there are two other people in my
22 office that are commissioner designees that can accept
23 them as well.

24 Q. And the actual Commissioner of Correction, could
25 they -- could he or she, if it were a she, make that

1 decision also?

2 A. Absolutely.

3 Q. When you get a request to take a 52A, what do you
4 look at to determine whether or not to take that
5 individual?

6 A. I look at housing first. Can I safely house him
7 in the Department of Correction. If I can't safely
8 house them, then we just look at all the variables. We
9 have to look at enemy issues, conflicts, gang-related
10 issues, medical/mental health, past incidents, previous
11 time with us, if they've been with us before.
12 Obviously, a 52A would be. We look at everything
13 possibly we can before we accept.

14 Q. With regard to Mr. Ford in January of 2007 --

15 A. Uh-huh.

16 Q. -- why did you accept him into our custody at
17 that point?

18 A. I believe it was Norfolk County petitioned us.
19 He had been with us for several years, and they felt
20 that it was a better placement, and they asked the
21 Commissioner of Correction to continue custody of the
22 inmate.

23 Q. Did you make -- have any -- play any role in the
24 decision to house Mr. Ford in the DDU?

25 A. I did not.

1 Q. In June of 2007, Mr. Ford returned to the
2 department after being out on bail.

3 Were you part of that decision to accept him
4 into the Department of Correction?

5 A. Most likely I was part of it. Again, there are
6 two other people in my office that absolutely could have
7 played a role in the acceptance of it, yes.

8 Q. Again, in June of 2007, would you have made the
9 determination to place him in the DDU?

10 A. No.

11 Q. In either January or June of 2007, if Mr. Ford
12 could not have been placed -- was not placed in the DDU,
13 what would your recommendation have been?

14 MR. SYRETT: Objection, your Honor.

15 THE COURT: That's sustained.

16 I need some background as to her involvement
17 with 52As because right now, as far as I can tell,
18 you're telling me they don't get classified.

19 THE WITNESS: Correct.

20 THE COURT: Right.

21 MS. DANIELE: I apologize.

22 BY MS. DANIELE:

23 Q. Assistant Deputy Commissioner Mici, once you get
24 all of the information on a 52A, how do you place them?

25 A. I place them based on their behavior that they

1 have had in the past. We house many of our 52As at
2 MCI-Concord. Problematic ones we house in maximum
3 security. So it depends on the nature of the incidents
4 or what -- the request.

5 Q. In January of 2007, when you accepted Mr. Ford as
6 a pretrial detainee, where would you have placed him if
7 he hadn't been in the DDU?

8 MR. SYRETT: Objection, your Honor. We --
9 we continue to object to the testimony of alternatives
10 that didn't happen.

11 THE COURT: I understand that alternatives
12 didn't happen. I'm just trying to understand why this
13 witness will add beyond what anybody else says, what her
14 role was distinct from the others.

15 MS. DANIELE: Yep. It will become clear
16 based on -- because Mr. St. Amand's testimony was that
17 he would have gone to Ten Block if he couldn't be housed
18 and because he couldn't be housed in the general
19 population of Cedar Junction. She would have taken over
20 after that.

21 THE COURT: I'll hear the testimony.

22 Objection overruled.

23 Did you look at Mr. Ford's file? You
24 didn't; he went straight into DDU; right?

25 THE WITNESS: He did go straight into DDU.

1 THE COURT: And you were not involved in
2 that?

3 THE WITNESS: I was not involved in his
4 placement in DDU, correct.

5 BY MS. DANIELE:

6 Q. In January of 2007, when you accepted Mr. Ford,
7 where would you have placed him?

8 A. Based on what I know of the case, I would have to
9 say he would at least start out at Cedar Junction,
10 probably in Ten Block, which is the segregation unit.

11 Q. If --

12 THE COURT: What would your other
13 alternatives have been?

14 THE WITNESS: We do have another maximum
15 security facility, Souza-Baranowski, that also has a
16 seg. unit, and I -- I say seg. unit because of the
17 nature of some of the behavior and his history within
18 the Department of Corrections.

19 So, when we bring somebody in from another
20 county -- and we were very familiar with Mr. Ford. I
21 won't say per se myself I was overly familiar because he
22 had been in the DDU. It -- we sometimes will start them
23 out in maximum security if that's the only alternative;
24 and based on the history, I would say that that would
25 have been the alternative, one of the maximum security

1 seg. units.

2 THE COURT: One of the alternatives could
3 have been. Do you look at everybody, and you can send
4 them to Concord if you think that's appropriate or you
5 can send them to Souza-Baranowski?

6 THE WITNESS: Correct. Correct.

7 MR. SYRETT: Your Honor, we --

8 THE COURT: Okay. Are you objecting to
9 my question?

10 MR. SYRETT: No, we're objecting to this
11 line of inquiry. There's been no foundation established
12 that she's familiar with Mr. Ford, and I believe she
13 just specifically said she was not familiar with his
14 history --

15 THE COURT: I'm accepting this as general
16 alternatives, okay, as opposed to -- we -- we -- I think
17 the record is very clear that Mr. Ford was not evaluated
18 specifically when he came back in January or -- when his
19 status changed in January or June, he was simply placed
20 in the DDU. I don't think that that's disputed at this
21 point.

22 MR. SYRETT: No. I --

23 THE COURT: All right. So -- and I
24 understand that you don't feel that there should be a
25 comparison to anything other than general population.

1 The DOC feels that there should be a comparison with
2 anything but the general population, and I've reserved
3 that for my findings. So I understand that objection.

4 I do believe that the witness can testify as
5 to alternatives available, not necessarily for Mr. Ford.
6 Okay.

7 BY MS. DANIELE:

8 Q. Assistant Deputy Commissioner Mici, in January of
9 2007, if -- strike that.

10 Since this time, have you reviewed Mr. Ford's
11 history at all?

12 A. I have.

13 Q. Okay. And in reviewing that history, can you
14 make a determination in both January and June of 2007,
15 when Mr. Ford was accepted as a 52A where you would have
16 recommended -- recommended that he be placed?

17 MR. SYRETT: Objection, your Honor.

18 THE COURT: Overruled.

19 THE WITNESS: Yes, I can.

20 BY MS. DANIELE:

21 Q. Where would that have been?

22 A. Maximum security.

23 Q. And the two institutions that were available to
24 you were what?

25 A. Souza-Baranowski Correctional Center and

1 MCI-Cedar Junction.

2 Q. And do you know now which one you would have
3 recommended?

4 A. Back in 2007, I would say MCI-Cedar Junction.

5 Q. And why is that?

6 A. In 2007, there has been a little bit of --
7 there's been some changes in the department since then,
8 and in 2007, actually, Souza-Baranowski Correctional
9 Center was more treated as a stepdown from Cedar
10 Junction; so I would think that the nature of the
11 history would have spoken to Cedar Junction at that
12 time.

13 Q. If you had placed Mr. Ford at Cedar Junction, and
14 he would have -- he were placed in Ten Block at the SMU,
15 and you were contacted by the superintendent that he
16 couldn't be placed in the Cedar Junction's general
17 population, what would you have done?

18 A. Well, there are probably two alternatives I could
19 have done. I could have seen if the county would take
20 him back, which generally does not happen, and the
21 second would have been Souza-Baranowski, the other
22 maximum security facility segregation unit.

23 Q. And the -- why the segregation unit at Souza?

24 A. Based on the history. His history had been in
25 DDU. I -- I'm not sure of enemies at this point. I

1 need to figure all that stuff out. Sometimes -- I think
2 I said this earlier -- that's where they start, until we
3 can find the appropriate placement because it certainly
4 isn't the goal to leave him in segregation, but
5 sometimes you have no alternatives.

6 Q. What -- are you familiar with the segregation
7 unit at Souza-Baranowski?

8 A. Yes.

9 Q. Does the segregation unit at Souza-Baranowski
10 have the same privileges as Ten Block, the same
11 conditions of confinement as Ten Block?

12 A. All segregation units in the department have the
13 same conditions of confinement, so, yes.

14 Q. So, if there was testimony about the conditions
15 of confinement at Ten Block, those would be the same for
16 Souza-Baranowski?

17 A. They should be, yes.

18 Q. And in the segregation unit at Souza, are TVs
19 allowed?

20 A. No, I do not believe so.

21 MS. DANIELE: Your Honor, at this point, I'd
22 like to introduce photographs of the segregation unit at
23 Souza. I believe they're objected to. They have been
24 turned over. It's the same exact photographs that we've
25 had of the other units.

1 THE COURT: Is the objection a relevance
2 objection?

3 MR. SYRETT: It's relevance, your Honor, and
4 foundation. I think she just testified that they should
5 be the same conditions. It's not clear to us if she has
6 firsthand knowledge sufficient to --

7 MS. DANIELE: I'll establish that.

8 THE COURT: You'll establish that, and then
9 the relevance objection is overruled.

10 BY MS. DANIELE:

11 Q. Assistant Deputy Commissioner Mici, have you been
12 inside the segregation unit at Souza-Baranowski?

13 A. Yes, I have.

14 Q. And are you familiar with what the unit looks
15 like and the cells inside it look like?

16 A. Yes.

17 THE CLERK: Twenty-seven.

18 THE COURT: I haven't admitted it yet, Tom.

19 MS. DANIELE: Your Honor, may I approach so
20 she can identify them?

21 THE COURT: Yes.

22 BY MS. DANIELE:

23 Q. Assistant Deputy Commissioner, and again I'm
24 handing you an exhibit that's not yet been marked as a
25 number, but it's three photographs.

1 Could you identify the top one, please.

2 A. It is one of the segregation units at
3 Souza-Baranowski Correctional Center.

4 Q. And how do you know that?

5 A. The colors. I've been in the unit. I'm familiar
6 with it.

7 MS. DANIELE: Your Honor, I would move to
8 have that photo admitted.

9 THE COURT: Are those all photographs of the
10 segregation unit at Souza-Baranowski?

11 THE WITNESS: Yes, they are. Yes, they are.

12 THE COURT: And is that as of 2007?

13 THE WITNESS: Yes. They have not changed
14 since then, so that's correct.

15 THE COURT: Is there an objection other than
16 relevance?

17 MR. SYRETT: No, your Honor.

18 THE COURT: All right. Objection overruled.
19 I'll mark the photographs as the next exhibit, which I
20 believe is 27?

21 (Exhibit No. 27 was admitted into evidence.)

22 BY MS. DANIELE:

23 Q. Could you turn to the second photograph and tell
24 me what that is, please.

25 A. The inside of a cell in the seg. unit.

1 Q. And the last page?

2 A. The solid door of the same seg. unit.

3 Q. That inmate cell door, is that --

4 A. Yes, excuse me. That inmate cell door, yes.

5 Q. Assistant Deputy Commissioner Mici, in September
6 of -- September 30th of 2010, this Court issued an order
7 in this case finding that Mr. Ford was unconstitutionally
8 housed in the DDU during his pretrial time.

9 Subsequent to that decision, were you involved in
10 any way in decisions of what should be done at that
11 point with Mr. Ford's housing?

12 A. I was involved in some of the meetings subsequent
13 to that decision, yes.

14 Q. Could you tell the Court briefly what occurred.

15 A. I believe the meeting was with two commissioners
16 ago, Commissioner Clarke, counsel for the Department of
17 Correction, some other key staff members, and myself,
18 discussing what our placement options were for Mr. Ford.

19 Q. And in November of 2010, do you recall having
20 similar meetings --

21 A. Yes.

22 Q. -- with -- did anything change in these meetings?

23 A. Some of the players did. I know that the
24 commissioner -- Commissioner Clarke had left, so we -- I
25 believe we had Acting Commissioner Duval at the time,

1 and we had to restrategize to make sure we could all
2 come up with a consent as to what his best placement
3 was.

4 Q. While we were -- while you were all discussing
5 the best placement, did anything happen that you're
6 aware of?

7 A. I believe -- yes, Mr. Ford received a D report
8 during that time frame, a disciplinary report that led
9 to his DDU referral.

10 THE COURT: Is that still pending in the
11 Superior Court?

12 MS. DANIELE: Yes, it is, your Honor.

13 THE COURT: Okay. I gather you're not
14 claiming attorney-client privilege on any of these
15 meetings?

16 MS. DANIELE: No, your Honor.

17 THE COURT: So why wasn't there a hearing
18 similar to any other hearing that is held before someone
19 is put in DDU?

20 THE WITNESS: The hearing that's held prior
21 to going into DDU is generally a dis -- based on a
22 disciplinary report. During these meetings, it wasn't
23 discussion of a disciplinary report. It was more
24 discussion of, okay, we need to find an appropriate
25 placement for him, and it was not an easy decision at

1 all.

2 THE COURT: But was there any discussion
3 about having a hearing where he could present his
4 version of the events?

5 THE WITNESS: There was a discussion of
6 that, yes.

7 THE COURT: And what happened to that?

8 THE WITNESS: You know, it was -- it was
9 discussion, and a decision just wasn't reached. I
10 believe we had two meetings, and then we started over
11 with a new commissioner, and it just -- people couldn't
12 come to a consensus as to a hearing or a placement, a
13 placement at that hearing. It just -- it just wasn't an
14 easy decision at all.

15 THE COURT: Thank you.

16 BY MS. DANIELE:

17 Q. Assistant Deputy Commissioner Mici, in November
18 of 2010, once Mr. Ford received his DDU referred
19 disciplinary report, do you know if he received a
20 hearing with regard to that report?

21 A. Yes.

22 Q. Do you know whether or not Mr. Ford is currently
23 housed in the DDU?

24 A. Yes, he is.

25 Q. Do you know when he's scheduled to be released

1 from the DDU?

2 A. Yes, August 4th of this year.

3 THE COURT: Where is he going?

4 THE WITNESS: What will happen from there is
5 he'll be transferred to Souza-Baranowski Correctional
6 Center Segregation Unit, and at that point there will be
7 a classification hearing held. It's -- per policy, it
8 needs to be held within 30 days, and then that board
9 will come to my office for a placement decision.

10 THE COURT: So the persons on the
11 classification board are people from Souza-Baranowski?

12 THE WITNESS: Correct.

13 THE COURT: But then they come to you?

14 THE WITNESS: Correct. Inmates can't move
15 throughout the system without coming through my office.
16 They can't transfer; so, yes, they all come to me.

17 THE COURT: A good place to be.

18 MS. DANIELE: Your question was my last
19 question, your Honor, so thank you.

20 CROSS-EXAMINATION

21 BY MR. SYRETT:

22 Q. Good afternoon, Ms. Mici.

23 A. Good afternoon.

24 Q. Ms. Daniele asked you some questions about your
25 review of Mr. Ford's history; correct?

1 A. Correct.

2 Q. And she asked you what your decision would have
3 been in 2007 based on the review of that history?

4 A. Correct.

5 Q. And when you use the term "history," what are you
6 referring to?

7 A. History within the Department of Correction,
8 during his DDU time, during any time he spent in the
9 Department of Correction --

10 Q. Okay.

11 A. -- is the history.

12 Q. And that's a written history, disciplinary
13 reports, that sort of thing?

14 A. Correct.

15 Q. And you have no firsthand knowledge of Mr. Ford
16 as an inmate, do you, apart from your review of his
17 history?

18 A. Firsthand knowledge as far as?

19 Q. Have you ever observed Mr. Ford's behavior as an
20 inmate?

21 A. I have not.

22 Q. Is it fair to say that the substance -- your
23 review of the history would have been -- form the
24 substance of your decision in 2007?

25 A. Yes, that's how it works because I can't see all

1 inmates, correct.

2 MR. SYRETT: Your Honor, we move to strike
3 her testimony regarding her decision in 2007. It's
4 entirely based on, as she's just testified, her view of
5 written documents that aren't in evidence and are
6 hearsay.

7 THE COURT: I think it goes to the weight,
8 not the admissibility.

9 BY MR. SYRETT:

10 Q. The classification department decides to which
11 prisons pretrial detainees are sent; correct?

12 A. Correct.

13 Q. The classification department generally doesn't
14 determine the placement of a pretrial detainee within a
15 prison; is that right?

16 A. There's two answers to that. I do sometimes make
17 a decision where to put the inmate based on information
18 I have received, but for the most part, internal
19 placements do happen at the facility level.

20 Q. And in 2007 and 2008, you had no involvement in
21 determining Mr. Ford's placement within Cedar Junction;
22 correct?

23 A. I hadn't even made a placement decision, and, no,
24 and I did not have the decision for the DDU, if that's
25 what you're referring to.

1 Q. And you testified that in January 2007, you were
2 not involved in Mr. Ford -- the decision to accept
3 Mr. Ford as a pretrial detainee; is that correct?

4 A. Oh, no, I was involved in the decision to accept
5 him. I wasn't involved in where he was placed.

6 Q. What was your involvement?

7 A. The facsimile was sent to my office from Norfolk
8 County; and as the Commissioner of Correction designee,
9 I accepted his placement in the Department of
10 Correction.

11 Q. And is it fair to say you didn't consider any
12 other options for his placement apart from Cedar
13 Junction at the time?

14 A. It -- I wasn't given the opportunity. It --
15 certainly Cedar Junction absolutely, that's where he had
16 been, but the placement decision was decided by somebody
17 else.

18 Q. And when you say the "placement decision," are
19 you referring to the prison or within the prison?

20 A. Within the prison.

21 Q. But did you make a decision that he would remain
22 at Cedar Junction?

23 A. No, I made the decision that he would remain
24 at -- in the Department of Correction. The decision
25 would have been Cedar Junction, had that been given to

1 me.

2 THE COURT: So you're making an initial
3 assessment on a 52A on whether or not somebody comes
4 into the Department of Correction; that's step one?

5 THE WITNESS: Correct.

6 THE COURT: And then step two is where
7 within the Department of Corrections as a facility?

8 THE WITNESS: Correct.

9 THE COURT: And then at the facility level,
10 it's where within the facility somebody would be placed?

11 THE WITNESS: Correct. And I may have
12 involvement in the internal, depending on what
13 information I have; I may not have to. So, yes, that is
14 correct.

15 BY MR. SYRETT:

16 Q. And in June of 2007, you didn't make the decision
17 to accept Mr. Ford as a pretrial detainee; correct?

18 A. It was somebody in my office; so, it was myself
19 or one of my two staff members that -- again, we are the
20 people who do do the accepting of the 52As.

21 Q. But, again, your office would have had no
22 involvement in the determination of where Mr. Ford would
23 have been placed within Cedar Junction?

24 A. Correct.

25 Q. The Department of Correction had no policies for

1 the detention of pretrial detainees; correct?

2 A. Correct.

3 Q. And there are no policies that require different
4 treatment for pretrial detainees compared to convicted
5 inmates; correct?

6 A. There are no policies within the department. We
7 go by just the statute.

8 Q. And when you say "the statute," you mean 52A?

9 A. The 276, 52A, correct.

10 Q. And I believe you testified earlier that pretrial
11 detainees are not classified; is that correct?

12 A. Not through the objective system, they are not
13 classified, correct.

14 Q. And inmates in the DDU are not classified?

15 A. Correct.

16 Q. So is it fair to say that Mr. Ford hasn't had
17 classification since 2007 at least?

18 A. That is fair to say.

19 Q. So, none of the factors that the department would
20 take into consideration during a classification have
21 been applied to Mr. Ford during that process?

22 A. Correct.

23 Q. You testified about meetings in September and
24 November; correct?

25 A. Yes.

1 Q. Of 2010?

2 A. Yes.

3 Q. And who was at the September meeting?

4 A. I -- General Counsel Nancy White. There might
5 have been some other people from legal as well. The
6 current -- the commissioner at the time, which was
7 Commissioner Clarke, Assistant Deputy Commissioners for
8 the northern and southern sector. There might have been
9 some other Deputy Commissioners. I mean, there was a
10 pretty good roomful of people. I couldn't remember all
11 the players.

12 Q. Who were the Assistant Deputy Commissioners for
13 the northern and southern sectors?

14 A. At that time -- we change so much. Lou Spencer,
15 who is now the Commissioner of Correction, and Paul
16 DePalo.

17 Q. And you said there were differing views on how
18 to or where to place Mr. Ford?

19 A. Correct.

20 Q. Some people thought he should have a hearing
21 before he was placed; right?

22 A. Well, it was more just discussion about what to
23 do. Do we provide a hearing? Do we just simply place
24 him, have a hearing follow? And nothing was ever --
25 nothing was ever finalized.

1 Q. And do you recall what Nancy White's view was?

2 A. No, I don't. It really was dialogue and
3 discussion.

4 Q. And do you recall any views that Commissioner
5 Clarke expressed at the time?

6 A. I do not.

7 Q. Do you recall specific views that anyone
8 expressed at the time?

9 A. Again, there was many different views, but who
10 specifically had them, I really couldn't testify to.

11 Q. Okay. And did you have a view?

12 A. Um, I -- I think we were back and forth or I went
13 back and forth with a hearing, not a hearing, a
14 placement. You know, that's when I really needed to
15 take a very strong look at his case and --

16 Q. Why would you think that a hearing wouldn't be
17 appropriate?

18 A. It's not that it wouldn't be appropriate. It's
19 just -- it was such mixed feelings in the room that, you
20 know, we were listening to both sides or all three
21 sides, whatever it may have been.

22 Q. What would be the reason that you wouldn't have a
23 hearing?

24 A. To get him into a placement quicker. A hearing
25 takes time. Where can we put him?

1 You know, there -- there's -- when there's no
2 classification hearing held for several years, there's a
3 lot of information to put together, which is how we make
4 our decisions; so, it's not as easy as something that
5 you can really decide in a meeting in an hour.

6 Q. Was there any discussion of changing the -- the
7 DDU to accommodate Mr. Ford, changing the classification
8 of the DDU?

9 A. I'm not sure I understand the question.

10 Q. Was there any -- was there any discussion of
11 changing a portion of the DDU into a DSU?

12 A. There are some ongoing discussions about that, in
13 general, in the Department of Correction. I wouldn't
14 base it on Mr. Ford's -- I believe that has been going
15 on prior to any of this.

16 Q. But there was at least some discussion at these
17 meetings about keeping Mr. Ford in the DDU but
18 reclassifying it as a DSU?

19 A. I -- I honestly -- I hate to say if I'm mixing
20 the meetings up, but I'm on that committee as well, as
21 far as looking at DDU, DSU, and all different types of
22 things. I don't recall if that was something that
23 somebody came up with during the meeting with
24 Mr. Ford -- about Mr. Ford.

25 Q. But as you sit here today, it is possible that it

1 was discussed in the meeting?

2 A. It is possible, absolutely, yes.

3 Q. Now, do you recall who was at the November 2010
4 meeting?

5 A. Most of the same people with the exception of the
6 commissioner, and the -- again, I had said the
7 commissioner at the time was Mr. Duval. I believe he
8 was at that meeting.

9 Q. And do you recall any of the views anyone
10 expressed about what to do with Mr. Ford?

11 A. It was a lot of the same back and forth as
12 to -- just there was no general consensus.

13 Q. Did you have any views -- did you express any
14 views at that meeting?

15 A. Um, I mean, I -- I don't know if I expressed any
16 views, but I'm certain I was part of the -- the
17 dialogue.

18 Again, you know, there's only a few choices you
19 have: a hearing, another placement; can he safely be
20 housed in the department; does he need to go out of
21 state? I mean, there's a lot of things that I would
22 look at, but it's really hearing dependent.

23 Q. Okay. You mentioned a DDU sanction that Mr. Ford
24 recently received; correct?

25 A. Yes.

1 Q. Was the November meeting before or after Mr. Ford
2 received that sanction?

3 A. I -- I honestly -- I don't know.

4 Q. Mr. Ford received a DDU sanction; correct?

5 A. Yes.

6 Q. And that was sometime in -- he received a ticket
7 sometime in November?

8 A. Yes.

9 Q. And he since remained in the DDU after that
10 ticket?

11 A. Yes.

12 Q. Is it fair to say that Mr. Ford's receipt of that
13 ticket nullified the issue of where to place him for the
14 time being?

15 A. Yes.

16 MR. SYRETT: I have no further questions.

17 THE COURT: Anything further?

18 MS. DANIELE: I have nothing further, your
19 Honor.

20 THE COURT: You may step down.

21 THE WITNESS: Thank you.

22 THE COURT: My memory is is that we're going
23 to break now for today and resume tomorrow morning with
24 the expert; is that right?

25 MS. DANIELE: Yes. Our expert will be here,

1 and that will be the close of our case.

2 THE COURT: All right. And do we expect any
3 rebuttal?

4 MS. PIROZZOLO: Not at this time, your
5 Honor.

6 THE COURT: All right. So we'll resume
7 tomorrow morning then at 10:00.

8 And -- I'm sorry.

9 MS. SCHULMAN: I thought that the parties
10 had actually agreed to commence tomorrow at 9:30.

11 THE COURT: 9:30?

12 MS. DANIELE: Yes, we're fine with that.

13 THE COURT: Okay. 9:30 tomorrow morning
14 then, and I want to address this Exhibit B; so, take a
15 look at whatever records you have.

16 MS. PIROZZOLO: We'll look at what was
17 produced to us.

18 THE COURT: All right. I'll see you
19 tomorrow morning then.

20 MS. DANIELE: Thank you, your Honor.

21 THE CLERK: Court is in recess.

22

23 (At 2:55 p.m., Court was adjourned.)

24

25

C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby
certify that the foregoing transcript, consisting of 174
pages, is a true and accurate transcription of my
stenographic notes in Case No. 07cv11457-JGD, Albert
Ford versus James Bender, et al., before Judith G. Dein,
on July 26, 2011, to the best of my skill, knowledge,
and ability.

/s/ Marianne Kusa-Ryll08/04/2011

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter